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26 December 1981

TABLE OF COMPARISON

BETWEEN

DIGEST AND THE ACT

OXFORD
AT THE CLARENDON PRESS
1916

SUPPLEMENT

TO THE

GOVERNMENT OF INDIA

THE Government of India Act, 1915, is based upon the Digest published in the third edition of the *Government of India*, and reproduces that Digest with modifications which are mainly verbal.

The correspondence between the Digest and the Act is shown in the following Table of Comparison:

TABLE OF COMPARISON BETWEEN DIGEST AND ACT.

Digest.	*Act.*	*Remarks.*
1	1	For 'British India' the Act substitutes the synonymous expression 'the territories for the time being vested in His Majesty in India' so as to bring the language into closer conformity with that of the Act of 1858. It also incorporates in the text the title 'Emperor of India'.
2	2	Subs. (3) of s. 2 of Digest omitted as spent.
3	3	
4	4	
5	—	Omitted as unnecessary now that the term of office is reduced to 7 years.
6	5	S. 5 of Act also contains words transferred from s. 15 (1) of Digest.
7	6	
8	7	
9	8	
10	9	
11	10	
12	11	
13	12	
14	13	In subs. (2) 'India or of any part thereof' substituted for 'British India'; 'the levying of war, or the making of peace, or negotiations or treaties with any prince or state' substituted for 'any of the matters aforesaid'.
15	14 & 5	Subs. (1) of s. 15 of Digest transferred to s. 5 of Act.

Digest.	*Act.*	*Remarks.*
16	15	
17	16	
18	17	
19	18	
20	19	Language of proviso altered in Act, but without alteration of effect.
21	—	Omitted as unnecessary. Applied only to officers of the East India Company. Officers holding under the Crown in India hold during pleasure.
22	20	Slight alterations of language, but no alteration of substance.
23	21	
24	22	
25	23	
26	24	
27	25	
28	—	Omitted as spent.
29	26	Para. (c) contains matter which does not appear in the Digest but has been added in order to reproduce exactly the existing law.
30	27	
31	28	'*Real or personal estate*' substituted for the first 'property', and 'real estate' for the second 'property'.
32	29	
33	30 & 32 (4)	'Real or personal estate' substituted for 'movable or immovable property'. Power to mortgage confined to real estate. Power to sell and dispose of and to purchase or acquire property limited to property in British India. Subs. (3) of s. 33 of Digest embodied in s. 32 (4) of Act.
34	31	
35	32	
36	33	'India' substituted for 'British India'.
37	34	
38	35	
39	36	
40	37	S. 38 of the Act reproduces a provision (9 Edw. 7, c. 4, s. 4) for the appointment of a vice-president which does not appear in the body of the Digest but is referred to in a note on Digest s. 42.
		S. 41 of the Digest, which was merely

Digest.	*Act.*	*Remarks.*
		explanatory, is not specifically reproduced in the Act, but effect is given to it by the language of the Act.
42	39	
43	40	
44	41	
45	—	Not reproduced. The power to appoint a president of the Council is virtually repealed by the obligation to appoint a vice-president.
46	42	
47	43	Language changed in consequence of the omission of s. 45 of Digest.
48	44	
49	45	In subs. (1) the words 'and of all matters which ought, in its opinion, to be reported to him, or as to which he requires information' added to reproduce old enactments; 'direction and control' substituted for 'authority'; 'government' substituted for 'authority'. In subs. (2) power of suspension or removal added.
50	46	This section of the Act reproduces only subs. (1), (2), and (3) of s. 50 of the Digest. The effect of subs. (4) is preserved by the terms in which the Act is drawn. The powers given by subs. (5) were exhausted by the notification in the *Gazette* of August 1, 1912. See ss. 102 (2), 105 and 107 of the Act.
51	47	After s. 47 of the Act is inserted a new section (48) requiring each Governor to appoint a vice-president of his executive council. See note to s. 72 of Digest.
52	—	Omitted as merely explanatory.
53	50, 51	Provisions of existing law set out specifically, instead of by reference. There are slight differences between the procedure of the Governor-General's Council and the procedure in the Councils of Governors.
		After s. 51 of the Act is inserted a new section (52) reproducing existing provisions as to the Province of Agra.

Digest.	*Act.*	*Remarks.*
54	49	
55, subs. (1)	53, subs. (1)	The words 'with or without an executive council' added. Subs. (2) of s. 53 is substituted for part of subs. (1) of s. 74 of Digest.
55, subs. (2), (3), & (4)	54	Language of subs. (3) in Act slightly altered. After s. 54 of the Act are inserted three new sections (55, 56, and 57) relating to executive councils for lieutenant-governors (see note on page 218 of Digest) and a section (58) enumerating existing chief commissionerships.
56	59	Language slightly altered but substance not changed.
57	60	
58	61	
59	62	
60	63, subs. (1) to (6)	Reproduced with verbal changes.
61	64, subs. (1) & (2)	
62, subs. (1)	—	S. 63 (2) of Act provides for the quorum being fixed by rules.
62, subs. (2), (3)	64, subs. (3), (4)	The reference to a President is omitted from s. 64 (3) of the Act in consequence of the omission of s. 45 of Digest.
63, subs. (1), (2), & (3)	65	Some verbal changes. The provisions of the Act which can be altered by the Governor-General in Legislative Council are specified in Schedule V. Subs. (4) of s. 63 of Digest is covered by the wide language of s. 65 (1) (f) of Act.
63, subs. (5) & (6)	66	
64	67	Subs. (1) & (2) of s. 64 of Digest amalgamated and language slightly altered.
65	68	
66	69	
67	70	
68	71	
69	72	
70	—	This enumeration of local legislatures is omitted. See language of s. 73

Digest.	*Act.*	*Remarks.*
		(4) of Act. A list of local legislative councils is given in Schedule I.
71	73, 74	Reproduced with differences in language and arrangement but without alteration of substance.
72, subs. (1)	74, subs. (1)	In view of recent constitutional changes it was considered convenient to recast the provisions of the Digest relating to local legislatures and to rearrange them on a somewhat different plan. But the differences are differences of form, not of substance. The Act reproduces in substance the provisions to be found in the third edition of the Digest.
72, subs. (2)	75, subs. (3)	
72, subs. (3), (4)	75, subs. (4)	
72, subs. (5)	75, subs. (1), (2)	
73, subs. (1)	73, subs. (1), (3)	
73, subs. (2), (3), (4)	76, subs. (1)	S. 76 (2) of the Act does not appear in Digest but reproduces a provision of existing law.
73, subs. (5)	76, subs. (3)	
74, subs. (1)	53, subs. (2)	The power to constitute new lieutenant-governorships has been transferred from Part VI (relating to Indian legislation) to Part V (relating to local Governments).
	54, subs. (1)	
	77, subs. (1)	S. 77 (2) of the Act reproduces a provision of existing law. See note to s. 74 of Digest.
74, subs. (2)	61	
75, subs. (1)	78, subs. (2)	S. 78 (1) of Act reproduces a provision of existing law.
75, subs. (2)	76, subs. (1)	
75, subs. (3)	78, subs. (3)	
76	79	
77, subs. (1), (2)	80, subs. (1)	Subs. (1) & (2) of s. 77 of Digest amalgamated and language slightly altered.
77, subs. (3)	80, subs. (3)	
77, subs. (4)	80, subs. (2)	
77, subs. (5)	83, 80, subs. (3)	
78	81, 82	
79	84	
80	85	
81	86	
82	87	
83	88	

Digest.	*Act.*	*Remarks.*
84	89	The reference to a President is omitted from s. 89 (4) of the Act in consequence of the omission of s. 45 of Digest.
85	90	
86	91	
87	92	
88	93	
89	94	
90	95, subs. (1)	The power given by s. 95 (1) of the Act to reinstate officers, and s. 95 (2) of the Act, reproduce provisions of existing law.
91	96	The words 'natural born' in ss. 91
92	97	and 92 of Digest are omitted in view of s. 3 of the British Nationality and Status of Aliens Act, 1914 (4 & 5 Geo. 5, c. 17).
93	98	
94	99	
95	100	
96	101, subs. (2) to (4)	Subs. (5) of s. 101 of Act is new.
97	102	
98	103	
99	104, subs. (1)	Subs. (2) to (4) of s. 104 of Act reproduce provisions of existing law.
100	105	
101, subs. (1), (2)	106, subs. (1); 131, subs. (3)	The provision as to high courts being courts of oyer and terminer and jail delivery is omitted from the Act as being superseded by 24 & 25 Vict. c. 104, s. 9, and Letters Patent issued thereunder.
101, subs. (3)	106, subs. (2); 131, subs. (3)	
102	107	The provision in s. 107 of Act as to consistency with other Acts reproduces a saving in the existing law.
103	108, 131, subs. (3)	
104	109, 131, subs. (3)	
105	110, 131, subs. (3)	
106	111, 131, subs. (3)	
107		Omitted for the reason appearing in the note to s. 107.

Digest.	*Act.*	*Remarks.*
108	112, 131, subs. (3)	S. 113 of Act reproduces provisions of existing law. See note to s. 96 of Digest.
109	114	
110	115	
111	116, subs. (1) to (4)	Subs. (5) of s. 116 of Act reproduces a provision of existing law.
112	117	
113	118, subs. (1), (3)	The provision in s. 113 (2) of Digest as to providing a house for the Bishop of Calcutta is omitted as *exhausted*. Subs. (2), of s. 118, and ss. 119 and 120, of Act reproduce provisions of existing law.
114	121	
115	122	
116	123	
117	124	The words appearing in square brackets in the Digest are reproduced in the Act.
118	125	
119, subs. (1), (2)	127	
119, subs. (3)	128	'Six years' substituted for 'five years', to follow 33 Geo. 3, c. 52, s. 141. See note to s. 119 of Digest. S. 129 of Act reproduces provisions of existing law, and s. 130 effects repeals, with savings.
120	126	
121	131, subs. (1), (2)	S. 131 (3) of Act is new in point of form, and covers Sch. V.
122	132	
123	133	
123*A*	55, subs. (2) 63, subs. (7) 67, subs. (3) 74, subs. (5) 76, subs. (4) 80, subs. (3)	
124	101, subs. (1), 134	
Sch. I	Sch. II	
Sch. II	Sch. III	

THE
GOVERNMENT OF INDIA

BEING A DIGEST OF THE STATUTE LAW
RELATING THERETO

WITH HISTORICAL INTRODUCTION

AND

EXPLANATORY MATTER

BY

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THIRD EDITION

OXFORD
AT THE CLARENDON PRESS
LONDON AND NEW YORK: HUMPHREY MILFORD
ALSO SOLD BY
STEVENS & SONS, LIMITED, 119 & 120 CHANCERY LANE, LONDON
1915

PREFACE TO THE SECOND EDITION

THIS is a revised edition of a book which was published in 1898.

In the year 1873 the Secretary of State for India sent to the Government of India the rough draft of a Bill to consolidate the enactments relating to the Government of India. This draft formed the subject of correspondence between the India Office and the Government of India, and an amended draft, embodying several proposals for alteration of the law, was submitted to the India Office by the Government of India in the month of February, 1876. After that date the matter was allowed to drop.

The case for consolidating the English statutes relating to India is exceptionally strong. The Government of India is a subordinate Government, having powers derived from and limited by Acts of Parliament. At every turn it runs the risk of discovering that it has unwittingly transgressed one of the limits imposed on the exercise of its authority. The enactments on which its authority rests range over a period of more than 120 years. Some of these are expressed in language suitable to the time of Warren Hastings, but inapplicable to the India of to-day, and unintelligible except by those who are conversant with the needs and circumstances of the times in which they were passed. In some cases they have been duplicated or triplicated by subsequent enactments, which reproduce with slight modifications, but without express repeal, the provisions of earlier statutes; and the combined effect of the series of enactments is only to be ascertained by a careful study and comparison of the several parts. A consolidating Act would repeal and supersede more than forty separate statutes relating to India.

In England the difficulty of threading the maze of administrative statutes is mitigated by the continuity of administrative tradition. In India there is no similar continuity. The Law Member of Council, on whom the Governor-General is mainly dependent for advice as to the nature and extent

of his powers, brings with him from England either no knowledge or a scanty knowledge of Indian administration, and holds office only for a term of five years. The members of the Civil Service who are posted at the head-quarters of the Central and Local Governments are engaged in climbing swiftly up the ladder of preferment, and rarely pause for many years on the same rung. Hence the risk of misconstruing administrative law, or overlooking some important restriction on administrative powers, is exceptionally great.

During various intervals of leisure after my return from India in 1886 I revised and brought up to date the consolidating draft of 1873, and endeavoured to make it an accurate reproduction of the existing statute law. The revised draft was submitted to the Secretary of State, but the conclusion arrived at, after communication with the Government of India, was adverse to the introduction of a consolidating measure into Parliament at that time. It was, however, suggested to me by the authorities at the India Office that the draft might, if published as a digest of the existing law, be useful both to those who are practically concerned in Indian administration, and to students of Indian administrative law. It has accordingly been made the nucleus of the following pages.

The first chapter contains such amount of historical introduction as appeared necessary for the purpose of making the existing law intelligible. The sources from which I have drawn are indicated in a note at the end of the chapter. There are many excellent summaries of British Indian history, and the history of particular periods has been treated with more or less fullness in the biographies of Indian statesmen, such as those which have appeared in Sir William Hunter's series. But a history of the rise and growth of the British Empire in India, on a scale commensurate with the importance of the subject, still remains to be written. Sir Alfred Lyall's admirable and suggestive *Rise and Expansion of the British Dominion in India* appears to me to indicate, better than any book with which I am acquainted, the lines on which it might be written.

The second chapter contains a short summary of the

existing system of administrative law in India. This has been carefully revised in the present edition, and brought up to date.

The third chapter is a digest of the existing Parliamentary enactments relating to the government of India, with explanatory notes. This digest has been framed on the principles now usually adopted in the preparation of consolidation Bills to be submitted to Parliament; that is to say, it arranges in convenient order, and states in language appropriate to the present day, what is conceived to be the net effect of enactments scattered through several Acts. When this process is applied to a large number of enactments belonging to different dates, it is always found that there are *lacunae* to be filled, obscurities to be removed, inconsistencies to be harmonized, doubts to be resolved. The Legislature can cut knots of this kind by declaring authoritatively how the law is to be construed. The draftsman or the text-writer has no such power. He can merely state, to the best of his ability, the conclusions at which he has arrived, and supply materials for testing their accuracy.

The fourth chapter, which deals with the application of English law to the natives of India, is based on a paper read at a meeting of the Society of Comparative Legislation. It points to a field in which useful work may be done by students of comparative jurisprudence.

In the fifth chapter I have tried to explain and illustrate the legal relations between the Government of British India and the Governments of the Native States by comparison with the extra-territorial powers exercised by British authorities in other parts of the world, such as the countries where there is consular jurisdiction, and in particular the modern protectorates. The subject is interesting and important, but full of difficulty. The rules and usages which govern the relation between States and peoples of different degrees and kinds of civilization are in a state of constant flux and rapid growth, and on many topics dealt with in this chapter it would be unsafe to lay down general propositions without qualifying and guarding words. There are quicksands at every step.

Since the date of the first edition of this work important changes have been made in the Orders in Council which regulate the exercise of jurisdiction in African protectorates, and the jurisdiction exercised by the Governor-General in Council in the Native States of India has been brought into line with the extra-territorial jurisdiction exercised under authority of the British Crown in other parts of the world by shifting its basis from an Act of the Indian legislature to an Order in Council under the Foreign Jurisdiction Act, 1890.

I am indebted for valuable assistance to friends both at the India Office and in India. Frequent reference has also been made to the minutes of Sir H. S. Maine printed for the Indian Legislative Department in 1890.

But although the book owes its origin to an official suggestion, and has benefited by the criticisms of official friends, it is in no sense an official publication. For any statements or expressions of opinion I am personally and exclusively responsible.

I have omitted from this edition certain reprints of documents which are to be found elsewhere. The charters of the Indian High Courts are now to be found in Vol. VI of the *Statutory Rules and Orders Revised*. The first Charter to the East India Company, with some omissions, will be found in Prothero, *Statutes and Constitutional Documents*. The other illustrative documents printed in ch. viii of the first edition would find an appropriate place in a selection of documents illustrating the constitutional history of British India. Such a selection would be of great use to students.

C. P. Ilbert.

Speaker's Court,
January, 1907.

PREFACE TO THE THIRD EDITION

This edition incorporates the two supplementary chapters added to the second edition, and makes such further additions and alterations as are required to bring the book up to date.

C. P. I.

Speaker's Court,
December, 1914.

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1727. George II.	1726. Municipal charters granted to Calcutta, Madras, and Bombay. Mayors' courts established in each place.
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1748. Treaty of Aix-la-Chapelle.	1748. English besiege Pondicherry. Madras restored to English by Treaty of Aix-la-Chapelle.
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	1751. Clive seizes Arcot.
	1752. French surrender Trichinopoly.
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1754. Duke of Newcastle, Prime Minister.	1754. French recall Dupleix. Treaty of peace signed at Pondicherry. Mutiny Act (27 Geo. II, c. 9) passed for Indian forces.
1756–61. The elder Pitt directs foreign policy of England.	1756. Suráj-ud-doulá becomes Nawab of Bengal and (June) takes Calcutta. (Black Hole Massacre.)
1756–63. Seven Years' War.	Rupture between France and England.
	1757 (January). Clive recovers Calcutta. (June 23). Battle of Plassey.
	1758. Lally's expedition reaches India.—Lally besieges Madras. Maráthá invasion of Punjab.

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1759. Wolfe takes Quebec.	**1759.** Lally raises siege of Madras. —Defeat of Dutch in Bengal.
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	Clive returns to England.
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1762. Bute, Prime Minister.	Ahmed Shah defeats Maráthás at
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1766 (July). Duke of Grafton, Prime Minister.	**1766.** Grant of Northern Sarkars to Company.
	(November). Parliamentary inquiry into affairs of Company.
	1767–9. First war of English with Hyder Alí.
	1767. Clive finally leaves India.
	Acts of Parliament relating to East India Company (7 Geo. III, cc. 48, 49, 56, 57). Power to declare dividend restrained. Company to pay £400,000 annually into Exchequer.
1768–71. Captain Cook circumnavigated the world.	**1768.** Restraint on dividend continued (8 Geo. III, c. 11).
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	1769. New arrangement for five years between Government and Company. Payment of annuity of £400,000 continued (9 Geo. III, c. 24).
1770. Lord North, Prime Minister. —Disturbance at Boston.	**1770.** Famine in Bengal.
	1771 (August 28). Company resolve to 'stand forth as Diwan' of Bengal.

General History.	India.
	1772. Warren Hastings, Governor of Bengal.—Draws up plan of government.
	Directors of East India Company declare a deficit, and appeal to Lord North for help.
	(November). Secret Parliamentary inquiry into affairs of Company.
1773. The people of Boston board the English ships and throw the tea overboard.	**1773.** Regulating Act passed (13 Geo. III, c. 63).
	Motion condemning Clive rejected.
1774. Congress meets at Philadelphia and denies right of Parliament to tax colonies.—Accession of Louis XVI.	**1774.** Warren Hastings becomes first Governor-General of India.
	Rohilla War.
	Death of Clive.
1775. George Washington appointed Commander-in-Chief of American Forces.	**1775.** Benares and Ghazipur ceded to Company.
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1778. Death of Earl of Chatham.	**1778.** English seize French settlements in India.
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	1780. Hyder Ali ravages Carnatic.
1781. England at war with Spain, France, Holland, and American colonies.	**1781.** Benares insurrection.—Defeat of Hyder Ali at Porto Novo.—Treaty of Peace with Maráthás.
Cornwallis surrenders at Yorktown.	Parliamentary inquiries into administration of justice in Bengal and into causes of Carnatic War.—Act passed to amend the Regulating Act (21 Geo. III, c. 70).
1782. Lord North resigns.—Lord Rockingham and then Lord Shelburne, Prime Ministers.	**1782.** Death of Hyder Ali.
Grattan's Declaration of Right accepted by Irish Parliament.	Naval battles between French and English in Bay of Bengal.
1783 (April 2). Coalition ministry under Duke of Portland as Prime Minister.	**1783.** Pondicherry and other French settlements restored to France by Treaty of Versailles.

General History.	India.
1783 (*January*). Treaty of Versailles.—Peace signed between England and United States.	**1783–4**. Fox's India Bill introduced and rejected.
1783 (*December* 23)–**1801**. William Pitt, Prime Minister.	**1784**. Treaty of peace with Tippu, Sultan of Mysore.—General peace in India.
1783. General peace in Europe.	Pitt's Act establishing Board of Control (24 Geo. III, sess. 2, c. 25).
	1785. Warren Hastings leaves India.
	Mahdajee Sindia (Marátha) occupies Delhi.
1786. Burke moves impeachment of Warren Hastings.	**1786**. Act passed to enlarge powers of Governor-General (26 Geo. III, c. 16).
	1786–93. Lord Cornwallis, Governor-General.
1788–95. Trial of Warren Hastings.	**1787**. Tippu sends embassies to Paris and Constantinople.
	1789–90. Tippu attacks Travancore.
1789. Beginning of French Revolution.	**1790–2**. War with Tippu.
	1791. Bangalore taken.
	1792. Tippu signs treaty of peace ceding territory.
1793. Execution of Louis XVI. War between England and France declared February 11.	**1793**. English take Pondicherry.
	Permanent settlement of Bengal.
	Cornwallis leaves India.
	Act renewing Company's charter (33 Geo. III, c. 52).
	1793–8. Sir J. Shore (Lord Teignmouth), Governor-General.
1795. Cape of Good Hope captured from Dutch.	**1795**. The Maráthás defeat the Nizám.
	1796. Ceylon taken from Dutch.
1797. Battle of Cape St. Vincent.—Mutiny at the Nore.	**1797**. Shah Zeman invades Punjab.
1798. Irish Rebellion.	**1798–1805**. Marquis Wellesley, Governor-General.
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1799. Buonaparte, First Consul.	**1799**. Capture of Seringapatam. Death of Tippu. Partition of Mysore.
1800. Union of Great Britain and Ireland.	**1800**. Subsidiary treaty with Nizám.
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1801. Addington, Prime Minister.	**1801**. Incorporation of Carnatic. Oudh cedes territory by subsidiary treaty.

General History.	India.
1802. Treaty of Amiens. Cape restored to Dutch.	**1802.** Treaty of Bassein and restoration of Peshwá.
1803 (May). War declared between England and France.	**1803.** League of Sindia and Nagpur Raja (Maráthás). Maráthá War (Battles of Assaye, Argaum, Laswaree).
1804. Pitt's second ministry. Napoleon, Emperor.	**1804.** Gáekwar of Baroda submits to subsidiary system.
1805 (October 21). Battle of Trafalgar.—Capitulation of Ulm. (December 2). Battle of Austerlitz.	**1805** (July to October). Lord Cornwallis again Governor-General.—Succeeded by Sir George Barlow (till 1807).
1806 (January 23). Death of William Pitt.—Ministry of 'All the Talents.'—Lord Grenville, *Prime Minister.* Berlin Decrees issued, and Orders in Council issued in reply.	**1806.** Mutiny of Sepoys at Vellore.
1807. Duke of Portland, Prime Minister.	**1807.** War with Travancore.
1808–14. Peninsular War.	**1807–13.** Lord Minto, Governor-General.
1809. Walcheren expedition.—Battle of Wagram. Perceval, Prime Minister. English occupy the Cape.	**1809.** Travancore subdued.
1810. Mauritius taken from French.	
1812. Napoleon *invades Russia.* War between England and United States. (June). *Lord Liverpool*, Prime Minister (till 1827). (July). Battle of Salamanca.	
1813 (*June*). *Battle of Vittoria.* (October 16–19). Battle of Leipzig.	**1813.** Charter Act of 1813 (55 Geo. III, c. 155). East India Company loses monopoly of Indian trade.
	1813–23. Lord Hastings, Governor-General.
1814. First Peace of Paris.—*Napoleon* abdicates. Cape ceded to England.	**1814–15.** Gúrkha War.
1815 (February). Napoleon returns *from Elba.* (June 18). Battle of Waterloo. (November). Second Peace of *Paris.*	**1815.** Kumaon ceded.
	1817. Pindáris conquered.
	1817–18. Third Maráthá War, ending in annexation of Poona and reduction of Holkar and Rajputana.
1820. George IV. Congress at Troppau, afterwards at Laybach.	**1819.** Wazir of Oudh assumes title of King.

General History.	India.
1821 (May). Death of Napoleon Buonaparte. Congress of Verona.	
1822 (*March 27*). Canning appointed Governor-General of India but made Foreign Secretary instead (September).	**1823–8.** Lord Amherst, Governor-General.
1825. Commercial panic in England.	**1824.** War with Burma. Rangoon taken.
	1826. Storming of *Bhurtpur*. Annexation of Assam.
1827 (April 24). Canning, Prime Minister; dies August 8. (September 5). Lord Goderich, Prime Minister. (October 20). Battle of Navarino.	
1828 (January 25). Duke of Wellington, Prime Minister.	**1828–35.** Lord William Bentinck, Governor-General.
1830 (June 26). William IV. (November 22). Lord Grey, Prime Minister.	**1830.** Mysore becomes a protected State.
1832 (June). Reform Bill passed.	**1833.** Charter Act (3 & 4 Will. IV, c. 85) terminates trading functions of East India Company and defines legislative powers of Governor-General in Council. Macaulay appointed legislative member of Governor-General's Council.
1834 (July 17). Lord Melbourne, Prime Minister; dismissed November 15. (December 26). Sir Robert Peel, Prime Minister.	**1834.** Annexation of Coorg.
1835 (April 8). Sir Robert Peel resigns. (April 18). Lord Melbourne, Prime Minister.	**1835.** Lord Heytesbury appointed Governor-General by Sir R. Peel, but appointment cancelled by Whigs.
	1836–42. Lord Auckland, Governor-General.
	1836. Lieutenant-Governorship of North-Western Provinces constituted.
1837. Queen Victoria.	**1838.** First Afghan War.
1839–42. War between England and China.	**1839.** Capture of Ghazni and Kandahar. Death of Ranjit Singh.
	1840. Surrender of Dost Mohammad.

General History.	India.
1841 (September 6). Sir R. Peel, Prime Minister.	**1841.** Insurrection at Cabul and disastrous retreat of British troops.
	1842–4. Lord Ellenborough, Governor-General.
	1842. Pollock recaptures and evacuates Cabul.
	1843. Annexation of Sind (Battle of *Meeanee*).—Capture of *Gwalior*.
	1844–8. Lord Hardinge, Governor-General.
	1845. Danish possessions bought.
	1845–6. Sikh War. Battles of Múdki and Ferozeshah (1845).
1846. Repeal of Corn Laws.	**1846.** Battles of Aliwal and Sobraon. —Treaty of Lahore.
(June.) Sir R. Peel resigns.	
(July 6.) Lord John Russell, Prime Minister.	
1848. Chartist riots.—Revolution in France.	**1848–56.** Lord Dalhousie, Governor-General.
	1849. Satára annexed.—Second Sikh War. Battles of Chillianwallah and Goojerat.—Punjab annexed.
	1850. Bombay Railway commenced.
1852. Louis Napoleon, Emperor.	**1852.** Second Burmese War.—Pegu annexed.
(February 27). Lord Derby, Prime Minister.	**1853.** Last Charter Act (16 & 17 Vict. c. 95) passed; remodels constitution of Legislative Council.
(December 28). Lord Aberdeen, Prime Minister.	*Jhánsi, the Berars, and Nagpur* annexed. — Telegraphs commenced.
1854–5. Crimean War.	**1854.** Bengal constituted a Lieutenant-Governorship.
1855 (February 10). Lord Palmerston, Prime Minister.	
1856. Treaty of Paris.	**1856.** Oudh annexed.
	1856–62. Lord Canning, Governor-General.
	1857–8. Indian Mutiny. — Outbreaks at *Meerut* and Delhi (June). Delhi taken (September). First relief of Lucknow by Havelock and Outram (September). Final relief of Lucknow by Sir Colin Campbell (November).

General History.	India.
1858 (February 25). Lord Derby, Prime Minister.	**1858**. Government of India Act, 1858 (21 & 22 Vict. c. 106), places British India under direct government of Crown.—Lord Canning, Viceroy. (November 1). Queen's Amnesty Proclamation published in India.
1859. Italian War. — Battles of Magenta and Solferino. (June 18). Lord Palmerston, Prime Minister.	**1859**. Punjab constituted a Lieutenant-Governorship under Sir John Lawrence. Indian Code of Civil Procedure passed. **1860**. Indian Penal Code passed. **1862**. Indian Civil Service Act, 1861 (24 & 25 Vict. c. 54), Indian Councils Act, 1861 (24 & 25 Vict. c. 67), and Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), passed by Parliament. —Code of Criminal Procedure passed in India. **1862–3**. Lord Elgin, Viceroy. **1864–9**. Lord Lawrence, Viceroy. **1864**. Bhután Dwárs annexed.
1865 (November 6). Lord Russell becomes Prime Minister on death of Lord Palmerston.	**1865**. Indian Succession Act passed.
1866. War between Prussia and Austria.—Battle of Königgrätz or Sadowa.	**1866**. Famine in Orissa.
(July 6). Lord Derby, Prime Minister.	**1867** (September). Straits Settlements separated from India.
1868 (February 27). B. Disraeli, Prime Minister. Abyssinian expedition. (December 9). W. E. Gladstone, Prime Minister.	**1868**. Sher Alí, Amir of Afghanistan.
1869 (November). Suez Canal opened.	**1869–72**. Lord Mayo, Viceroy.
1870. Franco-German War.—Revolution in France.	**1869**. Legislative Department of Government of India established.
1871. King William of Prussia becomes German Emperor.	**1872**. Indian Contract Act and Evidence Act passed.
1874 (February 21). B. Disraeli, Prime Minister.	**1872–6**. Lord Northbrook, Viceroy. **1876–80**. Lord Lytton, Viceroy. **1876–8**. Famine in India.

General History.	India.
1877. Russo-Turkish War.	**1877** (January 1). Queen proclaimed Empress of India at Delhi.
1878. Treaties of San Stefano (March) and Berlin (July).	**1878.** Invasion of Afghanistan.
	1879 (July). Treaty of Gandamak. (September). Cavagnari killed at Cabul.—English invade Afghanistan.
	1880–4. Lord Ripon, Viceroy.
1880 (April 25). W. E. Gladstone, Prime Minister.	**1880** (July). Abdurrahman recognized as Amir of Afghanistan. —Battle of Maiwand. General Roberts' march from Cabul to Kandahar.
1882. Indian troops used in the Egyptian War.	**1884.** Boundary Commission appointed to settle North-West frontier.
	1884–8. Lord Dufferin, Viceroy.
1885 (June 24). Lord Salisbury, Prime Minister.	**1885.** Third Burmese War.
1886 (February 6). W. E. Gladstone, Prime Minister.	**1886** (January 1). Upper Burma annexed.
(August 3). Lord Salisbury, Prime Minister.	(November 21). Legislative Council established for North-Western Provinces.
1887. Jubilee of Queen Victoria's reign.	**1888–93.** Lord Lansdowne, Viceroy.
	1889. Military expeditions sent against hill tribes.
	1890. Chin and Lushai expeditions. —Rising in Manipur.
	1891. Massacre in Manipur.
1892 (August 18). W. E. Gladstone, Prime Minister.	**1892.** Constitution and procedure of Indian Legislative Councils altered by Indian Councils Act, 1892 (55 & 56 Vict. c. 14).
	1893. Separate armies of Madras and Bombay abolished by Madras and Bombay Armies Act 1893 (56 & 57 Vict. c. 62).
	(June 26). Indian Mint closed.
1894 (March 3). Lord Rosebery, Prime Minister.	**1894** (January 27). Lord Elgin, Viceroy.
	(December 27). Import duty imposed on cotton.
1895 (July 2). Lord Salisbury, Prime Minister.	**1895.** Chitral Expedition.
	1896. Appearance of plague in Bombay.

General History.	India.
	1896–7. Famine in India.
1897 (June). Jubilee celebrations in England.	**1897** (April 9). Legislative Council established for Punjab. Burma constituted a Lieutenant-Governorship, *with a Legislative* Council.
	(June 12). Earthquake in Bengal. *War on North-Western frontier.*
	1898. Appearance of plague at Calcutta and in Madras. Famine *Commission.*
1899 (October 11). Boer War commenced: ended May 31, 1902.	**1899** (January 6). Lord Curzon, Viceroy.
	1899–1900. Recurrence of famine in India.
1901 (January 22). Death of Queen Victoria.	**1901** (*October*). *Death of Amir* Abdurrahman of Afghanistan. Punitive operations *against* Mahsud Waziris.
(January 24). Proclamation of *King Edward* VII.	(November). Constitution of the North-West *Frontier* Province under a Chief Commissioner.
1902 (*August 9*). *Coronation.*	**1902.** 'North-Western Provinces *and Oudh*' *renamed* '*United* Provinces of Agra and Oudh'.
(January 30). Anglo-Japanese Treaty signed.	**1902-3.** Indian Police Commission.
(*July*). *Mr. Balfour*, Prime Minister.	**1903** (*January*). *Delhi Durbar.*
	(October). Incorporation of Berar with the Central Provinces.
	1903-4. Mission to Tibet.
1904 (February 8). *Russo-Japanese* War commenced: ended September 5, 1905; Peace Treaty signed at Portsmouth, U.S.A.	**1904.** Indian Universities Act.
Anglo-French Agreement signed.	**1904–5.** Mission to Cabul.
1905 (*August 12*). *Anglo-Japanese* Treaty signed.	**1905** (March). Constitution of Railway Board in India.
(December 5). Sir Henry Campbell-Bannerman, Prime Minister.	(April 4). Earthquake in Punjab. Reorganization of Military Department of the *Government* of India: creation of Army and Military Supply Departments. Eastern *Bengal and Assam* constituted a separate administration under a Lieutenant-Governor *with a Legislative* Council.
	(November 18). Lord Minto, Viceroy.

General History.	India.
	1905–6. Visit of the *Prince and* Princess of Wales to India.
1906 (*January 8*). Parliament dissolved.	**1906.** Convention between Great Britain and *China regarding* Tibet.
1907 (April 15). Colonial Conference at the Colonial Office. (First meeting.)	**1907.** Agreement with the Chinese *Government for* the gradual extinction of the export of Indian opium to China.
(August 31). Anglo-Russian Agreement signed.	**1907–8.** Famine in the United Provinces.
	1907–9. Royal Commission on Decentralization in India.
1908 (April 4). Arbitration Treaty between Great Britain and the United States *signed at* Washington.	**1908.** Punitive operations *against* the Zakka Khel Afridis and Mohmands.
(April 5). Sir Henry Campbell-*Bannerman* (Premier) resigned (died April 22).	(November 2). *Proclamation of* the King-Emperor to the Princes and Peoples of India *on the fiftieth anniversary of* the transfer of the government of India to the Crown.
Mr. Asquith, Prime Minister.	
1908 (April 29). Mr. Lloyd George introduced Budget (November 2). Passed by the Commons (November 30). Rejected by the Lords and conflict between the two Houses commenced.	**1909** (*April*). *Military* Supply Department of the Government of India abolished.
	Indian Councils Act passed: legislative councils greatly enlarged and their functions extended; system of direct election of members introduced, and non official majorities established in provincial councils.
(September 20). South Africa Union Bill received Royal Assent.	**1910.** Indian Press Act.
1910. (January 10). Parliament dissolved. (April 29), Budget of 1909 *reintroduced* and passed.	(November). Education Department of the Government of India constituted.
(May 6). Death of King Edward VII. *Proclamation of* King George V.	(November). Constitution of an Executive Council to assist the Lieutenant-*Governor of Bengal.*
(June 17–November). Conference *between the leaders* of the Liberal and Unionist Parties held, but failed in its *object.*	(November 23). Lord Hardinge, Viceroy.
(October 3). Portuguese Revolution.	
(November 28). Parliament dissolved.	

General History.	India.
1911 (June 22). George V crowned.	**1911** (April 1). Constitution of the State of Benares.
(July 13). *Anglo-Japanese* Alliance renewed for 10 years.	**1911–12.** Visit of the King-Emperor and Queen-Empress to India. (*Durbar at Delhi, December* 12, 1911).
(August 14). House of Commons agreed to the *Vote for the payment of Members.*	Punitive expeditions against the Abors.
(August 18). Parliament Act received Royal Assent.	
(September 4). Recognition of the Portuguese Republic.	
1912 (April 3). Royal Commission appointed to inquire into the *trade of the Empire.*	**1912** (April 1). *Redistribution of* territory in Bengal: new province of Bengal constituted a Presidency Government under a Governor, Bihar and Orissa a Lieutenant-Governorship, and Assam a Chief-Commissionership.
(July 29). Death of the Emperor of Japan.	(*August* 1). *Executive* Council established in Bihar and Orissa.
(October 8). *First Balkan War* (Bulgaria, Servia, Greece, and Montenegro against Turkey) commenced.	Transfer of the seat of the Government *of India from* Calcutta to Delhi.
	(October 1). Constitution of the Province of Delhi, under a Chief Commissioner.
	(November). Legislative Council established in Assam.
	Royal Commission on the Public *Services in India* appointed.
	(December 23). Attempt to assassinate the Viceroy during the *State entry into Delhi.*
1913 (January 16). Government of Ireland Bill passed in Commons, (January 30) rejected by Lords.	**1913.** Sale of opium for export to China discontinued.
(March 7). *Parliament prorogued.*	(April). Royal *Commission on* Indian Finance and Currency appointed.
(March 10). Parliament met again.	(November). Legislative Council established in the Central Provinces.
(June 30). Second Balkan War. Bulgaria against Servia and Greece.	
(July 8). Government of Ireland Bill again passed by Commons and (July 22) rejected by Lords.	
(July 10). Rumania declares war against Bulgaria.	

General History.	India.
(July 15). *Government of Ireland* Bill again rejected by Lords.	
(Aug. 6). Treaty of Peace between Balkan Powers and Turkey signed at Bucharest.	
(September 28). Treaty of Peace between Bulgaria and Turkey signed at Constantinople.	
1914 (*May 26*). *Government of* Ireland Bill passed third time in Commons.	**1914.** Despatch of Indian troops to join the British Expeditionary Forces, the cost being *borne by Indian* revenues in accordance with Resolutions passed by the Governor-General's Council (Sept. 8) and both Houses of Parliament (Sept. 16 and Nov. 26).
(*June 28*). *Assassination* of Grand Duke Ferdinand.	
(July 21–24). Conference at Buckingham *Palace on Government* of Ireland Bill.	
(July 23). Ultimatum presented by Austria-Hungary to Servia.	
(July 28). Austria-Hungary declares war on Servia.	
(Aug. 1). Germany declares war on Russia.	
(Aug. 3). Germany declares war on France.	
(Aug. 4). Great Britain declares war on Germany.	
(Aug. 10). France declares war on Austria-Hungary.	
(Aug. 12). Great Britain declares war on Austria-Hungary.	
(Sept. 18). Government of Ireland Act and Established Church (Wales) Act passed under Parliament Act. Parliament prorogued.	
(Nov. 5). Great Britain declares war on Turkey.	
(Dec. 18). *Egypt* declared as British Protectorate.	

GOVERNORS-GENERAL OF FORT WILLIAM IN BENGAL.[1]

1774. Warren Hastings (Governor of Bengal from 1772).
1785. Sir J. Macpherson (temporary, February 1, 1785, to September 12, 1786).
1786. Lord Cornwallis.
1793. Sir John Shore (Lord Teignmouth).
1798. Sir Alured Clarke (temporary March 6 to May 18, 1798).
1798. Earl of Mornington (Marquis Wellesley).

[1] For more minute particulars as to dates see the India List.

1805. Lord Cornwallis (took office July 30, died October 5).
1805. *Sir George Barlow* (*temporary*, October 10, 1805, to July 31, 1807).
1807. Lord Minto.
1813. Lord Moira (Marquis of Hastings).
1823. John Adam (temporary, January 9 to August 1, 1823).
1823. *Lord Amherst.*
1828. W. B. Bayley (temporary, March 13 to July 4, 1828).
1828. Lord William Bentinck.

GOVERNORS-GENERAL OF INDIA.

1834. Lord *William Bentinck.*
1835. Sir Charles Metcalfe (temporary, March 20, 1835, to March 4, 1836).
1836. Lord Auckland.
1842. Lord Ellenborough.
1844. Sir Henry (Lord) Hardinge.
1848. Lord Dalhousie.
1856. Lord Canning.

VICEROYS AND GOVERNORS-GENERAL

(FROM NOV. 1, 1858).

1858. Lord Canning (continued as Viceroy).
1862. Lord Elgin.
1864. Sir John (Lord) Lawrence.
1869. Lord Mayo.
1872. Lord Northbrook.
1876. Lord Lytton.
1880. Lord Ripon.
1884. Lord Dufferin.
1888. Lord Lansdowne.
1894. Lord Elgin.
1899. Lord Curzon.
1905. Lord Minto.
1910. Lord Hardinge.

PRESIDENTS OF THE BOARD OF CONTROL.

1784. Lord Sydney.
1790. W. W. Grenville (afterwards Lord Grenville).
1793. Henry Dundas (afterwards Viscount Melville).
1801. Lord Lewisham (afterwards Dartmouth).
1802. Lord Castlereagh.
1806 (February 12). Lord Minto.
1806 (July 26). Thomas Grenville.
1806 (October 1). George Tierney.
1807. Robert Dundas (afterwards Viscount Melville).
1809 (July). Lord Harrowby.
1809 (November). Robert Dundas (afterwards Viscount Melville).
1812. Earl of Buckinghamshire.
1816. George Canning.
1821. Charles Bathurst.
1822. Charles Watkins Williams-Wynn.
1828 (*February*). *Robert Dundas* (afterwards Viscount Melville).
1828 (September). Lord Ellenborough.
1830. Charles Grant (afterwards Lord Glenelg).
1834. Lord Ellenborough.
1835. Sir John Cam Hobhouse.
1841 (September). Lord Ellenborough.
1841 (October). Lord Fitzgerald and Vesci.
1843. Lord Ripon.
1846. Sir John Cam Hobhouse.
1852 (February 6). Fox Maule (afterwards Lord Panmure and Earl of Dalhousie).
1852 (February 28). John Charles Herries.
1852 (December 30). Sir Charles Wood (afterwards Viscount Halifax).
1855. Robert Vernon Smith (afterwards Lord Lyveden).
1858 (March 6). Lord Ellenborough.
1858 (*June*). Lord Stanley (afterwards Earl of Derby).

SECRETARIES OF STATE FOR INDIA.

1858. Lord Stanley (afterwards Earl of Derby).
1859. Sir Charles Wood (afterwards Viscount Halifax).
1866 (February). Lord de Grey and Ripon (afterwards Marquis of Ripon).
1866 (July). Lord Cranborne (afterwards Marquis of Salisbury).
1867. Sir Stafford Northcote (afterwards Earl of Iddesleigh).
1868. Duke of Argyll.
1874. Lord Salisbury.
1878. Gathorne Hardy (afterwards Earl of Cranbrook).
1880. Lord Hartington (afterwards Duke of Devonshire).
1882. Lord Kimberley.
1885. Lord Randolph Churchill.
1886 (February). Lord Kimberley.
1886 (August). Sir Richard Cross (afterwards Lord Cross).
1892. Lord Kimberley.
1894. H. H. Fowler (afterwards Sir H. Fowler).
1895. Lord George Hamilton.
1903. St. John Brodrick.
1905. John Morley.
1910. Earl of Crewe.
1911 (March). Viscount Morley.
1911 (May). Marquis of Crewe.

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Page 142, *note* 2 *should read :*

Under the Indian Councils Act, 1909, there is power to constitute executive councils for lieutenant-governors. The Lieutenant-Governor of Bihar and Orissa has an Executive Council, established in 1912. An Executive Council for the United Provinces has been promised.

THE

GOVERNMENT OF INDIA

A DIGEST OF THE LAW RELATING TO THE GOVERNMENT OF INDIA

CHAPTER I

HISTORICAL INTRODUCTION

Twofold origin of British authority in India

BRITISH authority in India may be traced, historically, to a twofold source. It is derived partly from the British Crown and Parliament, partly from the Great Mogul and other native rulers of India

In England, the powers and privileges granted by royal charter to the East India Company were confirmed, supplemented, regulated, and curtailed by successive Acts of Parliament, and were finally transferred to the Crown

In India, concessions granted by, or wrested from, native rulers gradually established the Company and the Crown as territorial sovereigns, in rivalry with other country powers, and finally left the British Crown exercising undivided sovereignty throughout British India, and paramount authority over the subordinate native States

It is with the development of this power in England that we are at present concerned The history of that development may be roughly divided into three periods

Three periods in history of constitutional development

During the first, or trading, period, which begins with the charter of Elizabeth in 1600, the East India Company are primarily traders They enjoy important mercantile privileges, and for the purposes of their trade hold sundry factories, mostly on or near the coast, but they have not yet assumed the responsibilities of territorial sovereignty. The cession of Burdwan, Midnapur, and Chittagong in 1760 makes them masters of a large tract of territory, but the first period may

perhaps be most fitly terminated by the grant of the *diwani* in 1765, when the Company become practically sovereigns of Bengal, Bihar, and Orissa.

During the second period, from 1765 to 1858, the Company are territorial sovereigns, sharing their sovereignty in diminishing proportions with the Crown, and gradually losing their mercantile privileges and functions. This period may, with reference to its greater portion, be described as the period of double government, using the phrase in the sense in which it was commonly applied to the system abolished by the Act of 1858. The first direct interference of Parliament with the government of India is in 1773, and the Board of Control is established in 1784.

The third and last period, the period of government by the Crown, begins with 1858, when, as an immediate consequence of the Mutiny of 1857, the remaining powers of the East India Company are transferred to the Crown.

In each of these periods a few dates may be selected as convenient landmarks.

Landmarks of first period.

The first period is the period of charters. The charter of 1600 was continued and supplemented by other charters, of which the most important were James I's charter of 1609, Charles II's charter of 1661, James II's charter of 1686, and William III's charters of 1693 and 1698.

The rivalry between the Old or 'London' Company and the New or 'English' Company was terminated by the fusion of the two Companies under Godolphin's Award of 1708.

The wars with the French in Southern India between 1745 and 1761 and the battles of Plassey (1757) and Baxar (1764) in Northern India indicate the transition to the second period.

Landmarks of second period.

The main stages of the second period are marked by Acts of Parliament, occurring with one exception at regular intervals of twenty years.

North's Regulating Act of 1773 (13 Geo. III, c. 63) was followed by the Charter Acts of 1793, 1813, 1833, and 1853. The exceptional Act is Pitt's Act of 1784.

The Regulating Act organized the government of the Bengal Presidency and established the Supreme Court at Calcutta.

The Act of 1784 (24 Geo. III, sess. 2, c. 25) established the Board of Control.

The Charter Act of 1793 (33 Geo. III, c. 52) made no material change in the constitution of the Indian Government, but happened to be contemporaneous with the permanent settlement of Bengal.

The Charter Act of 1813 (53 Geo. III, c. 155) threw open the trade to India, whilst reserving to the Company the monopoly of the China trade.

The Charter Act of 1833 (3 & 4 Will. IV, c. 85) terminated altogether the trading functions of the Company.

The Charter Act of 1853 (16 & 17 Vict. c. 95) took away from the Court of Directors the patronage of posts in their service, and threw open the covenanted civil service to general competition.

Landmarks of third period.

The third period was ushered in by the Government of India Act, 1858 (21 & 22 Vict. c. 106), which declared that India was to be governed by and in the name of Her Majesty. The change was announced in India by the Queen's Proclamation of November 1, 1858. The legislative councils and the high courts were established on their present basis by two Acts of 1861 (24 & 25 Vict. cc. 67, 104). Since that date Parliamentary legislation for India has been confined to matters of detail. The East India Company was not formally dissolved until 1874.

Charter of Elizabeth.

The first charter of the East India Company was granted on December 31, 1600. The circumstances in which the grant of this charter arose have been well described by Sir A. Lyall.[1] The customary trade-routes from Europe to the East had been closed by the Turkish Sultan. Another route had been opened by the discovery of the Cape of Good Hope. Thus the trade with the East had been transferred from the cities and states on the Mediterranean to the states on the

[1] *British Dominion in India.*

Atlantic seaboard. Among these latter Portugal took the lead in developing the Indian trade, and when Pope Alexander VI (Roderic Borgia) issued his Bull of May, 1493, dividing the whole undiscovered non-Christian world between Spain and Portugal, it was to Portugal that he awarded India. But since 1580 Portugal had been subject to the Spanish Crown; Holland was at war with Spain, and was endeavouring to wrest from her the monopoly of Eastern trade which had come to her as sovereign of Portugal. During the closing years of the sixteenth century, associations of Dutch merchants had fitted out two great expeditions to Java by the Cape (1595–6 and 1598–9), and were shortly (1602) to be combined into the powerful Dutch East India Company. Protestant England was the political ally of Holland but her commercial rival, and English merchants were not prepared to see the Indian trade pass wholly into her hands. It was in these circumstances that on September 24, 1599, the merchants of London held a meeting at Founders' Hall, under the Lord Mayor, and resolved to form an association for the purpose of establishing direct trade with India. But negotiations for peace were then in progress at Boulogne, and Queen Elizabeth was unwilling to take a step which would give umbrage to Spain. Hence she delayed for fifteen months to grant the charter for which the London merchants had petitioned. The charter incorporated George, Earl of Cumberland, and 215 knights, aldermen, and burgesses, by the name of the 'Governor and Company of Merchants of London trading with the East Indies.' The Company were to elect annually one governor and twenty-four committees, who were to have the direction of the Company's voyages, the provision of shipping and merchandises, the sale of merchandises returned, and the managing of all other things belonging to the Company. Thomas Smith, Alderman of London, and Governor of the Levant Company, was to be the first governor.

The Company might for fifteen years 'freely traffic and use

the trade of merchandise by sea in and by such ways and passages already found out or which hereafter shall be found out and discovered . . . into and from the East Indies, in the countries and parts of Asia and Africa, and into and from all the islands, ports, havens, cities, creeks, towns, and places of Asia and Africa, and America, or any of them, beyond the Cape of Bona Esperanza to the Streights of Magellan.'

During these fifteen years the Company might assemble themselves in any convenient place, 'within our dominions or elsewhere,' and there 'hold court' for the Company and the affairs thereof, and, being so assembled, might 'make, ordain, and constitute such and so many reasonable laws, constitutions, orders, and ordinances, as to them or the greater part of them being then and there present, shall seem necessary and convenient for the good government of the same Company, and of all factors, masters, mariners, and other officers, employed or to be employed in any of their voyages, and for the better advancement and continuance of the said trade and traffick.' They might also impose such pains, punishments, and penalties by imprisonment of body, or by fines and amerciaments, as might seem necessary or convenient for observation of these laws and ordinances. But their laws and punishments were to be reasonable, and not contrary or repugnant to the laws, statutes, or customs of the English realm.

The charter was to last for fifteen years, subject to a power of determination on two years' warning, if the trade did not appear to be profitable to the realm. If otherwise, it might be renewed for a further term of fifteen years.

The Company's right of trading, during the term and within the limits of the charter, was to be exclusive, but they might grant licences to trade. Unauthorized traders were to be liable to forfeiture of their goods, ships, and tackle, and to 'imprisonment and such other punishment as to us, our heirs and successors, for so high a contempt, shall seem meet and convenient.'

The Company might admit into their body all such apprentices of any member of the Company, and all such servants or factors of the Company, 'and all such other' as to the majority present at a court might be thought fit. If any member, having promised to contribute towards an adventure of the Company, failed to pay his contribution, he might be removed, disenfranchised, and displaced.

Points of constitutional interest in charter of Elizabeth. Constitution of Company.

The points of constitutional interest in the charter of Elizabeth are the constitution of the Company, its privileges, and its legislative powers.

The twenty-four committees to whom, with the governor, is entrusted the direction of the Company's business, are individuals, not bodies, and are the predecessors of the later directors. Their assembly is in subsequent charters called the court of committees, as distinguished from the court general or general court, which answers to the 'general meeting' of modern companies.

The most noticeable difference between the charter and modern instruments of association of a similar character is the absence of any reference to the capital of the Company and the corresponding qualification and voting powers of members. It appears from the charter that the adventurers had undertaken to contribute towards the first voyage certain sums of money, which were 'set down and written in a book for that purpose,' and failure to pay their contributions to the treasurer within a specified date was to involve 'removal and disenfranchisement' of the defaulters. But the charter does not specify the amount of the several contributions,[1] and for all that appears to the contrary each adventurer was to be equally eligible to the office of committee, and to have equal voting power in the general court. The explanation is that the Company belonged at the outset to the simpler and looser form of association to which the City Companies then belonged, and still belong, and which used to be known by the name of

[1] The total amount subscribed in September, 1599, was £30,133, and there were 101 subscribers.

'regulated companies.' The members of such a company were subject to certain common regulations, and were entitled to certain common privileges, but each of them traded on his own separate capital, and there was no joint stock. The trading privileges of the East India Company were reserved to the members, their sons at twenty-one, and their apprentices, factors, and servants. The normal mode of admission to full membership of the Company was through the avenue of apprenticeship or service. But there was power to admit 'others,' doubtless on the terms of their offering suitable contributions to the adventure of the Company.

When an association of this kind had obtained valuable concessions and privileges, its natural tendency was to become an extremely close corporation, and to shut its doors to outsiders except on prohibitory terms, and the efforts of those who suffered from the monopoly thus created were directed towards reduction of these terms. Thus by a statute of 1497 the powerful Merchant Adventurers trading with Flanders had been required to reduce to 10 marks (£6 13*s*. 4*d*.) the fine payable on admission to their body. By similar enactments in the seventeenth century the Russia Company and Levant Company were compelled to grant privileges of membership on such easy terms as to render them of merely nominal value, and thus to entitle the companies to what, according to Adam Smith, is the highest eulogium which can be justly bestowed on a regulated company, that of being merely useless. The charter of Elizabeth contains nothing specific as to the terms on which admission to the privileges of the Company might be obtained by an outsider. It had not yet been ascertained how far those privileges would be valuable to members of the Company, and oppressive to its rivals.

Privileges of Company.

The chief privilege of the Company was the exclusive right of trading between geographical limits which were practically the Cape of Good Hope on the one hand and the Straits of Magellan on the other, and which afterwards became widely famous as the limits of the Company's charter. The only

restriction imposed on the right of trading within this vast and indefinite area was that the Company were not to 'undertake or address any trade into any country, port, island, haven, city, creek, towns, or places being already in the lawful and actual possession of any such Christian Prince or State as at this present or at any time hereafter shall be in league or amity with us, our heirs and successors, and which doth not or will not accept of such trade.' Subject to this restriction the trade of the older continent was allotted to the adventurers with the same lavish grandeur as that with which the Pope had granted rights of sovereignty over the new continent, and with which in our own day the continent of Africa has been parcelled out among rival chartered companies. The limits of the English charter of 1600 were identical with the limits of the Dutch charter of 1602, and the two charters may be regarded as the Protestant counter-claims to the monopoly claimed under Pope Alexander's Bull. During the first few years of their existence the two Companies carried on their undertakings in co-operation with each other; but they soon began to quarrel, and in 1611 we find the London merchants praying for protection against their Dutch competitors. Projects for amalgamation of the English and Dutch Companies fell through, and during the greater part of the seventeenth century Holland was the most formidable rival and opponent of English trade in the East.

'By virtue of our Prerogative Royal, which we will not in that behalf have argued or brought in question,' the Queen straitly charges and commands her subjects not to infringe the privileges granted by her to the Company, upon pain of forfeitures and other penalties. Nearly a century was to elapse before the Parliament of 1693 formally declared the exercise of this unquestionable prerogative to be illegal as transcending the powers of the Crown. But neither at the beginning nor at the end of the seventeenth century was any doubt entertained about the expediency, as apart from the constitutionality, of granting a trade monopoly of this descrip-

tion. Such monopolies were in strict accordance with the ideas, and were justified by the circumstances, of the time.

In the seventeenth century the conditions under which private trade is now carried on with the East did not exist. Beyond certain narrow territorial limits international law did not run, diplomatic relations had no existence.[1] Outside those limits force alone ruled, and trade competition meant war. At the present day territories are annexed for the sake of developing and securing trade. The annexations of the sixteenth century were annexations not of territory, but of trading-grounds. The pressure was the same, the objects were the same, the methods were different. For the successful prosecution of Eastern trade it was necessary to have an association powerful enough to negotiate with native princes, to enforce discipline among its agents and servants, and to drive off European rivals with the strong hand. No Western State could afford to support more than one such association without dissipating its strength. The independent trader, or interloper, was, through his weakness, at the mercy of the foreigner, and, through his irresponsibility, a source of danger to his countrymen. It was because the trade monopoly of the East India Company had outlived the conditions out of which it arose that its extinction in the nineteenth century was greeted with general and just approval.

Legislative powers of Company.

The powers of making laws and ordinances granted by the charter of Elizabeth did not differ in their general provisions from, and were evidently modelled on, the powers of making by-laws commonly exercised by ordinary municipal and commercial corporations. No copies of any laws made under the early charters are known to exist. They would doubtless have consisted mainly of regulations for the guidance of the Company's factors and apprentices. Unless supplemented by judicial and punitive powers, the early legislative powers of

[1] The state of things in European waters was not much better. See the description of piracy in the Mediterranean in the seventeenth century in Masson, *Histoire du Commerce Français dans le Levant*, chap. ii.

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the Company could hardly have been made effectual for any further purpose. But they are of historical interest, as the germ out of which the Anglo-Indian codes were ultimately developed. In this connexion they may be usefully compared with the provisions which, twenty-eight years after the charter of Elizabeth, were granted to the founders of Massachusetts.

Resemblance to Massachusetts Company.

In 1628 Charles I granted a charter to the Governor and Company of the Massachusetts Bay in New England. It created a form of government consisting of a governor, deputy governor, and eighteen assistants, and directed them to hold four times a year a general meeting of the Company to be called the 'great and general Court,' in which general court 'the Governor or deputie Governor, and such of the assistants and freemen of the Company as shall be present shall have full power and authority to choose other persons to be free of the Company and to elect and constitute such officers as they shall think fitte for managing the affairs of the said Governor and Company and to make Lawes and Ordinances for the Good and Welfare of the saide Company and for the Government and Ordering of the said Landes and Plantasion and the People inhabiting and to inhabit the same, soe as such Lawes and Ordinances be not contrary or repugnant to the Lawes and Statutes of this our realme of England.' The charter of 1628 was replaced in 1691 by another charter, which followed the same general lines, but gave the government of the colony a less commercial and more political character. The main provisions of the charter of 1691 were transferred bodily to the Massachusetts constitution of 1780, which is now in force, and which, as Mr. Bryce remarks,[1] profoundly influenced the convention that prepared the federal constitution of the United States in 1787.

Thus from the same germs were developed the independent republic of the West and the dependent empire of the East.

[1] *American Commonwealth*, pt. 2, chap. xxxvii. See also Lyall, *British Dominion in India*, p. 54.

Other English trading companies.

The Massachusetts Company may be taken as the type of the bodies of adventurers who during the early part of the seventeenth century were trading and settling in the newly discovered continent of the West. It may be worth while to glance at the associations of English merchants who, at the date of the foundation of the East India Company, were trading towards the East. Of these the most important were the Russia or Muscovy Company and the Levant or Turkey Company.[1]

Russia Company.

The foundations of the Russia Company[2] were laid by the discoveries of Richard Chancellor. In 1553–4 they were incorporated by charter of Philip and Mary under the name of 'the Merchants and Adventurers for the discovery of lands not before known or frequented by any English.' They were to be governed by a court consisting of one governor (the first to be Sebastian Cabot) and twenty-eight of the most sad, discreet, and learned of the fellowships, of whom four were to be called consuls, and the others assistants. They were to have liberty to resort, not only to all parts of the dominions of 'our cousin and brother, Lord John Bazilowitz, Emperor of all Russia, but to all other parts not known to our subjects.' And none but such as were free of or licensed by the Company were to frequent the parts aforesaid, under forfeiture of ships and merchandise—a comprehensive monopoly.

In 1566 the adventurers were again incorporated, not by charter, but by Act of Parliament, under the name of 'the fellowship of English Merchants for discovery of new trade,'[3] with a monopoly of trade in Russia, and in the countries

[1] A good account of the great trading companies is given by Bonnassieux, *Les Grandes Compagnies de Commerce* (Paris, 1892). See also Causton and Keene, *The Early Chartered Companies* (1896); the article on 'Colonies, Government of, by Companies' in the *Dictionary of Political Economy*; the article on 'Chartered Companies' in the *Encyclopaedia of the Laws of England*; and Egerton, *Origin and Growth of English Colonies* (1903).

[2] As to the Russia Company, see the Introduction to *Early Voyages to Russia* in the publications of the Hakluyt Society.

[3] This is said to have been the first English statute which established an exclusive mercantile corporation.

of Armenia, Media, Hyrcania, Persia, and the Caspian Sea.

In the seventeenth century they were compelled by the Czar of the time to share with the Dutch their trading privileges from the Russian Government, and by an Act of 1698, which reduced their admission fine to £5,[1] their doors were thrown open. After this they sank into insignificance.

A faint legal trace of their ancient privileges survives in the extra-territorial character belonging for marriage purposes to the churches and chapels formerly attached to their factories in Russia. Some years ago they existed—perhaps they still exist—as a dining club.[2]

Levant Company.

The Levant Company[3] was founded by Queen Elizabeth for the purpose of developing the trade with Turkey under the concessions then recently granted by the Ottoman Porte. Under arrangements made with various Christian powers and known as the Capitulations, foreigners trading or residing in Turkey were withdrawn from Turkish jurisdiction for most civil and criminal purposes. The first of the Capitulations granted to England bears date in the year 1579, and the first charter of the Levant Company was granted two years afterwards, in 1581. This charter was extended in 1593, renewed by James I, confirmed by Charles II, and, like the East India Company's charters, recognized and modified by various Acts of Parliament.

The Levant Company attempted to open an overland trade to the East Indies, and sent merchants from Aleppo to Bagdad and thence down the Persian Gulf. These merchants obtained articles at Lahore and Agra, in Bengal, and at Malacca, and on their return to England brought information of the profits to be acquired by a trade to the East Indies. In 1593 the Levant Company obtained a new charter, empowering them to trade to India overland through the terri-

[1] 10 & 11 Will. III, c. 6.

[2] MacCulloch, *Dictionary of Commerce*, 1871 edition.

[3] As to the Levant Company and the Capitulations, see below, p. 383.

tories of the Grand Signor. Under these circumstances it is not surprising to find members of the Levant Company taking an active part in the promotion of the East India Company. Indeed the latter Company was in a sense the outgrowth of the former. Alderman Thomas Smith, the first Governor of the East India Company, was at the same time Governor of the Levant Company, and the adventures of the two Companies were at the outset intimately connected with each other. At the end of the first volume of court minutes of the East India Company are copies of several letters sent to Constantinople by the Levant Company.

Had history taken a different course, the Levant Company might have founded on the shores of the Mediterranean an empire built up of fragments of the dominions of the Ottoman Porte, as the East India Company founded on the shores of the Bay of Bengal an empire built up of fragments of the dominions of the Great Mogul. But England was not a Mediterranean power, trade with the East had been deflected from the Mediterranean to the Atlantic, and the causes which had destroyed the Italian merchant states were fatal to the Levant Company. As the East India Company grew, the Levant Company dwindled, and in 1825 it was formally dissolved.

To return to the East India Company.

The separate voyages.

During the first twelve years of its existence, the Company traded on the principle of each subscriber contributing separately to the expense of each voyage, and reaping the whole profits of his subscription. The voyages during these years are therefore known in the annals of the Company as the 'separate voyages.' But after 1612 the subscribers threw their contributions into a 'joint stock,' and thus converted themselves from a regulated company into a joint-stock company, which, however, differed widely in its constitution from the joint-stock companies of the present day.

James I's charter of 1609.

In the meantime James I had in 1609 renewed the charter of Elizabeth, and made it perpetual, subject to determination

after three years' notice on proof of injury to the nation. The provisions of this charter do not, except with regard to its duration, differ in any material respect from those of the charter of Elizabeth.

Beginning of martial law exercisable by Company.

It has been seen that under the charter of Elizabeth the Company had power to make laws and ordinances for the government of factors, masters, mariners, and other officers employed on their voyages, and to punish offenders by fine or imprisonment. This power was, however, insufficient for the punishment of grosser offences and for the maintenance of discipline on long voyages. Accordingly, the Company were in the habit of procuring for each voyage a commission to the 'general' in command, empowering him to inflict punishments for non-capital offences, such as murder or mutiny, and to put in execution 'our law called martial.'[1]

Grant of 1615.

This course was followed until 1615, when, by a Royal grant of December 16, the power of issuing commissions embodying this authority was given to the Company, subject to a proviso requiring the verdict of a jury in the case of capital offences.

Grant of 1623.

By 1623 the increase in the number of the Company's settlements, and the disorderliness of their servants, had drawn attention to the need for further coercive powers. Accordingly King James I, by a grant of February 4, 162$\frac{2}{3}$[2], gave the Company the power of issuing similar commissions to their presidents and other chief officers, authorizing them to punish in like manner offences committed by the Company's servants on land, subject to the like proviso as to the submission of capital cases to the verdict of a jury.

[1] For an example of a sentence of capital punishment under one of these commissions, see Kaye, *Administration of East India Company*, p. 66. In transactions with natives the Company's servants were nominally subject to the native courts. Rights of extra-mural jurisdiction had not yet been claimed.

[2] The double date here and elsewhere indicates a reference to the three months, January, February, March, which according to the Old Style closed the old year, while under the New Style, introduced in 1751 by the Act 24 Geo. II, c. 23, they begin the new year.

Contests with Dutch and English rivals.

The history of the Company during the reigns of the first two Stuarts and the period of the Commonwealth is mainly occupied with their contests with Dutch competitors and English rivals.

Massacre of Amboyna.

The massacre of Amboyna (February 16, 162$\frac{2}{3}$) is the turning-point in the rivalry with the Dutch. On the one hand it enlisted the patriotic sympathies of Englishmen at home on behalf of their countrymen in the East. On the other hand it compelled the Company to retire from the Eastern Archipelago, and concentrate their efforts on the peninsula of India.

Courten's Association.

Under Charles I the extensive trading privileges of the Company were seriously limited. Sir William Courten, through the influence of Endymion Porter, a gentleman of the bedchamber, obtained from the king a licence to trade to the East Indies independently of the East India Company. His association, which, from a settlement established by it at Assada, in Madagascar, was often spoken of as the Assada Company, was a thorn in the side of the East India Company for many years.

Cromwell's relations to the Company.

Under the Commonwealth the intervention of the Protector was obtained for the settlement of the Company's differences both with their Dutch and with their English competitors. By the Treaty of Westminster in 1654, Cromwell obtained from the Dutch payment of a sum of £85,000 as compensation for the massacre of Amboyna and for the exclusion of the Company from trade with the Spice Islands. Difficulties arose, however, as to the apportionment of this sum among the several joint stocks of which the Company's capital was then composed, and, pending their settlement, Cromwell borrowed £50,000 of the sum for the expenses of the State. He thus anticipated the policy subsequently adopted by Montagu and his successors of compelling the Company to grant public loans as a price for their privileges.

Cromwell's charter of 1657.

Ultimately the Company obtained from Cromwell in 1657 a charter under which the rump of Courten's Association

was united with the East India Company, and the different stocks of the Company were united into a new joint stock. No copy of this charter is known to exist. Perhaps it was considered impolitic after the Restoration to preserve any evidence of favours obtained from the Protector.

The Company after the Restoration.

During the period after the Restoration the fortunes of the Company are centred in the remarkable personality of Sir Josiah Child, and are depicted in the vivid pages of Macaulay. He has described how Child converted the Company from a Whig to a Tory Association, how he induced James II to become a subscriber to its capital, how his policy was temporarily baffled by the Revolution, how vigorously he fought and how lavishly he bribed to counteract the growing influence of the rival English Company.

Marks of royal favour are conspicuous in the charters of the Restoration period.

Charles II's charter of 1661.

The charter granted by Charles II on April 3, 1661, conferred new and important privileges on the Company. Their constitution remained practically unaltered, except that the joint-stock principle was recognized by giving each member one vote for every £500 subscribed by him to the Company's stock. But their powers were materially increased.

They were given 'power and command' over their fortresses, and were authorized to appoint governors and other officers for their government. The governor and council of each factory were empowered 'to judge all persons belonging to the said Governor and Company or that shall be under them, in all causes, whether civil or criminal, according to the laws of this kingdom, and to execute judgement accordingly.' And the chief factor and council of any place for which there was no governor were empowered to send offenders for punishment, either to a place where there was a governor and council, or to England.

The Company were also empowered to send ships of war, men, or ammunition for the security and defence of their factories and places of trade, and 'to choose commanders

and officers over them and to give them power and authority, by commission under their common seal or otherwise, to continue or make peace or war with any people that are not Christians, in any places of their trade, as shall be for the most advantage and benefit of the said Governor and Company, and of their trade.' They were further empowered to erect fortifications, and supply them with provisions and ammunition, duty free, 'as also to transport and carry over such number of men, being willing thereunto, as they shall think fit,' to govern them in a legal and reasonable manner, to punish them for misdemeanour, and to fine them for breach of orders. They might seize unlicensed persons and send them to England, punish persons in their employment for offences, and in case of their appealing against the sentence seize them and send them as prisoners to England, there to receive such condign punishment as the merits of the offenders' cause should require, and the laws of the nation should allow.

Arrangements for administration of justice at Madras in seventeenth century.

With regard to the administration of justice, nothing appears to have been done towards carrying into effect the provisions of the charter of 1661 till the year 1678. At Madras, which was at that time the chief of the Company's settlements in India,[1] two or more officers of the Company used before 1678 to sit as justices in the 'choultry' to dispose of petty cases, but there was no machinery for dealing with serious crimes.[2]

In 1678 the agent and council at Madras resolved that, under the charter of 1661, they had power to judge all persons living under them in all cases, whether criminal or civil according to the English laws, and to execute judgement accordingly, and it was determined that the governor and council should sit in the chapel in the fort on every Wednesday and Saturday to hear and judge all causes. But this high

[1] The settlement of Madras or Fort St. George had been erected into a Presidency in 1651.

[2] See Wheeler, *Madras in Olden Times*.

court was not to supersede the justices of the choultry, who were still to hear and decide petty cases.

Grant of Bombay to the Company

In the meantime the port and island of Bombay, which had, in 1661, been ceded to the British Crown as a part of the dower of Catherine of Braganza, were, by a charter of 1669, granted to the East India Company to be held of the Crown, 'as of the Manor of Greenwich in free and common soccage,' for the annual rent of £10.

And by the same charter the Company were authorized to take into their service such of the king's officers and soldiers as should then be on the island and should be willing to serve them. The officers and men who volunteered their services under this power became the cadets of the Company's '1st European Regiment,' or 'Bombay Fusiliers,' afterwards the 103rd Foot

The Company were authorized, through their court of committees, to make laws, orders, ordinances, and constitutions for the good government and otherwise of the port and island and of the inhabitants thereof and, by their governors and other officers, to exercise judicial authority, and have power and authority of government or command, in the island, and to repel any force which should attempt to inhabit its precincts without licence, or to annoy the inhabitants. Moreover, the principal governor of the island was empowered 'to use and exercise all those powers and authorities, in cases of rebellion, mutiny, or sedition, of refusing to serve in wars, flying to the enemy, forsaking colours or ensigns, or other offences against law, custom, and discipline military, in as large and ample manner, to all intents and purposes whatsoever, as any captain-general of our army by virtue of his office has used and accustomed, and may or might lawfully do.'

The transition of the Company from a trading association to a territorial sovereign invested with powers of civil and military government is very apparent in these provisions.

Further attributes of sovereignty were soon afterwards conferred.

By a charter of 1677 the Company were empowered to coin money at Bombay to be called by the name of 'rupees, pices, and budjrooks,' or such other names as the Company might think fit. These coins were to be current in the East Indies, but not in England. A mint for the coinage of pagodas had been established at Madras some years before.

Charter of 1677 granting powers of coinage.

The commissioners sent from Surat[1] to take possession of Bombay on behalf of the Company made a report in which they requested that a judge-advocate might be appointed, as the people were accustomed to civil law. Apparently, as a temporary measure, two courts of judicature were formed, the inferior court consisting of a Company's civil officer assisted by two native officers, and having limited jurisdiction, and the supreme court consisting of the deputy governor and council, whose decisions were to be final and without appeal, except in cases of the greatest necessity.

Administration of justice at Bombay in seventeenth century.

By a charter of 1683 the Company were given full power to declare and make peace and war with any of the 'heathen nations' being natives of the parts of Asia and America mentioned in the charter, and to 'raise, arm, train, and muster such military forces as to them shall seem requisite and necessary; and to execute and use, within the said plantations, forts, and places, the law called the martial law, for the defence of the said forts, places, and plantations against any foreign invasion or domestic insurrection or rebellion.' But this power was subject to a proviso reserving to the Crown 'the sovereign right, powers, and dominion over all the forts and places of habitation,' and 'power of making peace and war, when we shall be pleased to interpose our royal authority thereon.'

Charter of 1683 giving power to raise forces and exercise martial law, and establishing Court of Admiralty.

By the same charter the king established a court of judicature, to be held at such place or places as the Company might direct, and to consist of 'one person learned in the

[1] Bombay was then subordinate to Surat, where a factory had been established as early as 1612, and where there was a president with a council of eight members.

civil law, and two assistants,' to be appointed by the Company. The court was to have power to hear and determine all cases of forfeiture of ships or goods trading contrary to the charter, and also all mercantile and maritime cases concerning persons coming to or being in the places aforesaid, and all cases of trespasses, injuries, and wrongs done or committed upon the high seas or in any of the regions, territories, countries or places aforesaid, concerning any persons residing, being, or coming within the limits of the Company's charter. These cases were to be adjudged and determined by the court, according to the rules of equity and good conscience, and according to the laws and customs of merchants, by such procedure as they might direct, and, subject to any such directions as the judges of the court should, in their best judgement and discretion, think meet and just.

The only person learned in the civil law who was sent out to India in pursuance of the charter of 1683 was Dr. John St. John. By a commission from the king, supplemented by a commission from the Company, he was appointed judge of the court at Surat. But he soon became involved in disputes with the governor, Sir John Child[1], who limited his jurisdiction to maritime cases, and appointed a separate judge for civil actions.

At Madras, the president of the council was appointed to supply the place of judge-advocate till one should arrive. But this arrangement caused much dissatisfaction, and it was resolved that, instead of the president's accepting this appointment, the old court of judicature should be continued, and that, until the arrival of a judge-advocate, causes should be heard under it as formerly in accordance with the charter of 1661.

Charter of 1686. In 1686 James II granted the Company a charter by which he renewed and confirmed their former privileges, and authorized them to appoint 'admirals, vice-admirals, rear-admirals, captains, and other sea officers' in any of the

[1] A brother of Sir Josiah Child.

Company's ships within the limits of their charter, with power for their naval officers to raise naval forces, and to exercise and use 'within their ships on the other side of the Cape of Good Hope, in the time of open hostility with some other nation, the law called the law martial for defence of their ships against the enemy.' By the same charter the Company were empowered to coin in their forts any species of money usually coined by native princes, and it was declared that these coins were to be current within the bounds of the charter.

The provisions of the charter of 1683 with respect to the Company's admiralty court were repeated with some modifications, and under these provisions Sir John Biggs, who had been recorder of Portsmouth, was appointed judge-advocate at Madras.

Establishment of municipality at Madras.

Among the prerogatives of the Crown one of the most important is the power of constituting municipal corporations by royal charter. Therefore it was a signal mark of royal favour when James II, in 1687, delegated to the East India Company the power of establishing by charter a municipality at Madras. The question whether this charter should be passed under the great seal or under the Company's seal was discussed at a cabinet council. The latter course was eventually adopted at the instance of the governor and deputy governor of the Company, and the reasons urged for its adoption are curious and characteristic. The governor expressed his opinion that no persons in India should be employed under immediate commission from His Majesty, 'because the wind of extraordinary honour in their heads would probably render them so haughty and overbearing that the Company would be forced to remove them.' He was evidently thinking of the recent differences between Sir John Child and Dr. St. John, and was alive to the dangers arising from an independent judiciary which in the next century were to bring about the conflicts between Warren Hastings and the Calcutta supreme court.

Charter of 1687.

Accordingly the charter of 1687, which established a municipality and mayor's court at Madras, proceeds from the Company, and not from the Crown. It recites 'the approbation of the king, declared in His Majesty's Cabinet Council[1] the eleventh day of this instant December,' and then goes on to constitute a municipality according to the approved English type. The municipal corporation is to consist of a mayor, twelve aldermen, and sixty or more burgesses. The mayor and aldermen are to have power to levy taxes for the building of a convenient town house or guild hall, of a public jail, and of a school-house 'for the teaching of the Gentues or native children to speak, read, and write the English tongue, and to understand arethmetick and merchants' accompts, and for such further ornaments and edifices as shall be thought convenient for the honour, interest, ornament, security, and defence' of the corporation, and of the inhabitants of Madras, and for the payment of the salaries of the necessary municipal officers, including a schoolmaster. The mayor and aldermen are to be a court of record, with power to try civil and criminal causes, and the mayor and three of the aldermen are to be justices of the peace. There is to be an appeal in civil and criminal cases from the mayor's court to 'our supreme court of judicature, commonly called our court of admiralty.' There is to be a recorder, who must be a discreet person, skilful in the laws and constitutions of the place, and who is to assist the mayor, in trying, judging, and sentencing causes of any considerable value or intricacy. And there is to be a town clerk and clerk of the peace, an able and discreet person, who must always be an Englishman born, but well skilled in the language of East India, and who is to be esteemed a notary public.

Nor are the ornamental parts of municipal life forgotten. 'For the greater solemnity and to attract respect and rever-

[1] This formal recognition of the existence of a cabinet council is of constitutional interest. But of course the cabinet council of 1687 was a very different thing from the cabinet council of the present day.

ence from the common people,' the mayor is to 'always have carried before him when he goes to the guild hall or other place of assembly, two silver maces gilt, not exceeding three feet and a half in length,' and the mayor and aldermen may 'always upon such solemn occasions wear scarlet serge gowns, all made after one form or fashion, such as shall be thought most convenient for that hot country.' The burgesses are, on these occasions, to wear white 'pelong,' or other silk gowns. Moreover, the mayor and aldermen are 'to have and for ever enjoy the honour and privilege of having rundelloes and kattysols[1] borne over them when they walk or ride abroad on these necessary occasions within the limits of the said corporation, and, when they go to the guild hall or upon any other solemn occasion, they may ride on horseback in the same order as is used by the Lord Mayor and aldermen of London, having their horses decently furnished with saddles, bridles, and other trimmings after one form and manner as shall be devised and directed by our President and Council of Fort St. George.'

Company's resolution of 1689.

The charter of 1687 was the last of the Stuart charters affecting the East India Company. The constitutional history of the Company after the Revolution of 1688 may be appropriately ushered in by a reference to the resolution which was passed by them in that year:

'The increase of our revenue is the subject of our care as much as our trade; 'tis that must maintain our force when twenty accidents may interrupt our trade; 'tis that must make us a nation in India; without that we are but a great number of interlopers, united by His Majesty's royal charter, fit only to trade where nobody of power thinks it their interest to prevent us; and upon this account it is that the wise Dutch, in all their general advices that we have seen, write ten paragraphs concerning their government, their civil and military policy, warfare, and the increase of their revenue, for one paragraph they write concerning trade.'

[1] Umbrellas and parasols.

This famous resolution, which was doubtless inspired, if not penned, by Sir Josiah Child, announces in unmistakable terms the determination of the Company to guard their commercial supremacy on the basis of their territorial sovereignty and foreshadows the annexations of the next century.

Controversies after Revolution of 1688.

The Revolution of 1688 dealt a severe blow to the policy of Sir Josiah Child, and gave proportionate encouragement to his rivals. They organized themselves in an association which was popularly known as the New Company, and commenced an active war against the Old Company both in the City and in Parliament. The contending parties presented petitions to the Parliament of 1691, and the House of Commons passed two resolutions—first, that the trade of the East Indies was beneficial to the nation, and secondly, that the trade with the East Indies would be best carried on by a joint-stock company possessed of extensive privileges. The practical question, therefore, was, not whether the trade to the East Indies should be abolished, or should be thrown open, but whether the monopoly of the trade should be left in the hands of Sir Josiah Child and his handful of supporters. On this question the majority of the Commons wished to effect a compromise—to retain the Old Company, but to remodel it and to incorporate it with the New Company. Resolutions were accordingly carried for increasing the capital of the Old Company, and for limiting the amount of the stock which might be held by a single proprietor. A Bill based on these resolutions was introduced and read a second time, but was dropped in consequence of the refusal of Child to accept the terms offered to him. Thereupon the House of Commons requested the king to give the Old Company the three years' warning in pursuance of which their privileges might be determined.

Two years of controversy followed. The situation of the Old Company was critical. By inadvertently omitting to pay a tax which had been recently imposed on joint-stock companies, they had forfeited their charter and might at

any time find themselves deprived of their privileges without any notice at all. At length, by means of profuse bribes, Child obtained an order requiring the Attorney-General to draw up a charter regranting to the Old Company its former privileges, but only on the condition that the Company should submit to further regulations substantially in accordance with those sanctioned by the House of Commons in 1691. However, even these terms were considered insufficient by the opponents of the Company, who now raised the constitutional question whether the Crown could grant a monopoly of trade without the authority of Parliament.[1] This question, having been argued before the Privy Council, was finally decided in favour of the Company, and an order was passed that the charter should be sealed.

Charters of 1693 and 1694.

Accordingly the charter of October 7, 1693, confirms the former charter of the Company, but is expressed to be revocable in the event of the Company failing to submit to such further regulations as might be imposed on them within a year. These regulations were embodied in two supplemental charters dated November 11, 1693, and September 28, 1694. By the first of these charters the capital of the Company was increased by the addition of £744,000. No person was to subscribe more than £10,000. Each subscriber was to have one vote for each £1,000 stock held by him up to £10,000, but no more. The governor and deputy governor were to be qualified by holding £4,000 stock, and each committee by holding £1,000 stock. The dividends were to be made in money alone. Books were to be kept for recording transfers of stock, and were to be open to public inspection. The joint stock was to continue for twenty-one years and no longer.

The charter of 1694 provided that the governor and deputy governor were not to continue in office for more than two

[1] The question had been previously raised in the great case of *The East India Company* v. *Sandys* (1683-85), in which the Company brought an action against Mr. Sandys for trading to the East Indies without a licence, and the Lord Chief Justice (Jeffreys) gave judgement for the plaintiffs. See the report in 10 State Trials, 371.

years, that eight new committees were to be chosen each year, and that a general court must be called within eight days on request by six members holding £1,000 stock each. The three charters were to be revocable after three years' warning, if not found profitable to the realm.

By a charter of 1698 the provisions as to voting powers and qualification were modified. The qualification for a single vote was reduced to £500, and no single member could give more than five votes. The qualification for being a committee was raised to £2,000.

The affair of the *Redbridge* and its results.

In the meantime, however, the validity of the monopoly renewed by the charter of 1693 had been successfully assailed. Immediately after obtaining a renewal of their charter the directors used their powers to effect the detention of a ship called the *Redbridge*, which was lying in the Thames and was believed to be bound for countries beyond the Cape of Good Hope. The legality of the detention was questioned, and the matter was brought up in Parliament. And on January 11, 169$\frac{3}{4}$, the House of Commons passed a resolution 'that all subjects of England have equal rights to trade to the East Indies unless prohibited by Act of Parliament.'

'It has ever since been held,' says Macaulay, 'to be the sound doctrine that no power but that of the whole legislature can give to any person or to any society an exclusive privilege of trading to any part of the world.' It is true that the trade to the East Indies, though theoretically thrown open by this resolution, remained practically closed. The Company's agents in the East Indies were instructed to pay no regard to the resolutions of the House of Commons, and to show no mercy to interlopers. But the constitutional point was finally settled. The question whether the trading privileges of the East India Company should be continued was removed from the council chamber to Parliament, and the period of control by Act of Parliament over the affairs of the Company began.

The first Act of Parliament for regulating the trade to

the East Indies was passed in 1698. The New Company had continued their attacks on the monopoly of the Old Company, a monopoly which had now been declared illegal, and they found a powerful champion in Montagu, the Chancellor of the Exchequer. The Old Company offered, in return for a monopoly secured by law, a loan of £700,000 to the State. But Montagu wanted more money than the Old Company could advance. He also wanted to set up a new company constituted in accordance with the views of his adherents. Unfortunately these adherents were divided in their views. Most of them were in favour of a joint-stock company. But some preferred a regulated company after the model of the Levant Company. The plan which Montagu ultimately devised was extremely intricate, but its general features cannot be more clearly described than in the language of Macaulay: 'He wanted two millions to extricate the State from its financial embarrassments. That sum he proposed to raise by a loan at 8 per cent. The lenders might be either individuals or corporations, but they were all, individuals and corporations, to be united in a new corporation, which was to be called the General Society. Every member of the General Society, whether individual or corporation, might trade separately with India to an extent not exceeding the amount which that member had advanced to the Government. But all the members or any of them might, if they so thought fit, give up the privilege of trading separately, and unite themselves under a royal Charter for the purpose of trading in common. Thus the General Society was, by its original constitution, a regulated company; but it was provided that either the whole Society or any part of it might become a joint-stock company.'

Incorporation of English Company.

This arrangement was embodied in an Act and two charters. The Act (9 & 10 Will. III, c. 44) authorized the Crown to borrow two millions on the security of taxes on salt, and stamped vellum, parchment, and paper, and to incorporate the subscribers to the loan by the cumbrous name of the

'General Society entitled to the advantages given by an Act of Parliament for advancing a sum not exceeding two millions for the service of the Crown of England.' The Act follows closely the lines of that by which, four years before, Montagu had established the Bank of England in consideration of a loan of £1,200,000. In each case the loan bears interest at the rate of 8 per cent., and is secured on the proceeds of a special tax or set of taxes. In each case the subscribers to the loan are incorporated and obtain special privileges. The system was an advance on that under which bodies of merchants had obtained their privileges by means of presents to the king or bribes to his ministers, and was destined to receive much development in the next generation. The plan of raising special loans on the security of special taxes has since been superseded by the National Debt and the Consolidated Fund. But the debt to the Bank of England still remains separate, and retains some of the features originally imprinted on it by the legislation of Montagu.

Of the charters granted under the Act of 1698, the first[1] incorporated the General Society as a regulated company, whilst the second[2] incorporated most of the subscribers to the General Society as a joint-stock company, under the name of 'The English Company trading to the East Indies.' The constitution of the English Company was formed on the same general lines as that of the Old or London Company, but the members of their governing body were called directors instead of 'committees.'

The New Company were given the exclusive privilege of trading to the East Indies, subject to a reservation of the concurrent rights of the Old Company until September 29, 1701. The New Company, like the Old Company, were authorized to make by-laws and ordinances, to appoint governors, with power to raise and train military forces, and to establish courts of judicature. They were also directed to maintain ministers of religion at their factories in India, and

[1] Charter of September 3, 1698. [2] Charter of September 5, 1698.

to take a chaplain in every ship of 500 tons. The ministers were to learn the Portuguese language and to 'apply themselves to learn the native language of the country where they shall reside, the better to enable them to instruct the Gentoos that shall be the servants or slaves of the same Company or of their agents, in the Protestant religion.' Schoolmasters were also to be provided.

Union of Old and New Companies.

It soon appeared that the Old Company had, to use a modern phrase, 'captured' the New Company. They had subscribed £315,000 towards the capital of two millions authorized by the Act of 1698. They had thus acquired a material interest in their rivals' concern, and, at the same time, they were in possession of the field. They had the capital and plant indispensable for the East India trade, and they retained concurrent privileges of trading. They soon showed their strength by obtaining a private Act of Parliament (11 & 12 Will. III, c. 4) which continued them as a trading corporation until repayment of the whole loan of two millions.

The situation was impossible; the privileges nominally obtained by the New Company were of no real value to them; and a coalition between the two Companies was the only practicable solution of the difficulties which had been created by the Act and charters of 1698.

The coalition was effected in 1702, through the intervention of Lord Godolphin, and by means of an Indenture Tripartite to which Queen Anne and the two Companies were parties, and which embodied a scheme for equalizing the capital of the two Companies and for combining their stocks. The Old Company were to maintain their separate existence for seven years, but the trade of the two Companies was to be carried on jointly, in the name of the English Company, but for the common benefit of both, under the direction of twenty-four managers, twelve to be selected by each Company. At the end of the seven years the Old Company were to surrender their charters. The New or English

Company were to continue their trade in accordance with the provisions of the charter of 1698, but were to change their name for that of 'The United Company of Merchants of England trading to the East Indies.'

A deed of the same date, by which the 'dead stock' of the two Companies was conveyed to trustees, contains an interesting catalogue of their Indian possessions at that time

Difficulties arose in carrying out the arrangement of 1702, and it became necessary to apply for the assistance of Parliament, which was given on the usual terms. By an Act of 1707 [1] the English Company were required to advance to the Crown a further loan of £1,200,000 without interest, a transaction which was equivalent to reducing the rate of interest on the total loan of £3,200,000 from 8 to 5 per cent. In consideration of this advance the exclusive privileges of the Company were continued to 1726, and Lord Godolphin was empowered to settle the differences still remaining between the London Company and the English Company. Lord Godolphin's Award was given in 1708, and in 1709 Queen Anne accepted a surrender of the London Company's charters and thus terminated their separate existence. The original charter of the New or English Company thus came to be, in point of law, the root of all the powers and privileges of the United Company, subject to the changes made by statute. Henceforth down to 1833 (see 3 & 4 Will. IV., c. 85, s. 111) the Company bear their new name of 'The United Company of Merchants of England trading to the East Indies.'

Period between 1708 and 1765.

For constitutional purposes the half-century which followed the union of the two Companies may be passed over very lightly.

An Act of 1711 [2] provided that the privileges of the United Company were not to be determined by the repayment of the loan of two millions.

The exclusive privileges of the United Company were

[1] 6 Anne, c. 71.

[2] 10 Anne, c. 35.

extended for further terms by Acts of 1730[1] and 1744[2]. The price paid for the first extension was an advance to the State of £200,000 without interest, and the reduction of the rate of interest on the previous loan from 5 per cent. to 4 per cent. By another Act of 1730[3] the security for the loan by the Company was transferred from the special taxes on which it had been previously charged to the 'aggregate fund,' the predecessor of the modern Consolidated Fund. The price of the second extension, which was to 1780, was a further loan of more than a million at 3 per cent. By an Act of 1750[4] the interest on the previous loan of £3,200,000 was reduced, first to 3½ per cent., and then to 3 per cent.

Extension of Company's charter.

Successive Acts were passed for increasing the stringency of the provisions against interlopers[5] and for penalizing any attempt to support the rival Ostend Company[6].

Provisions against interlopers.

In 1726 a charter was granted establishing or reconstituting

[1] 3 Geo. II, c. 14.
[2] 17 Geo. II, c. 17.
[3] 3 Geo. II, c. 20.
[4] 23 Geo. II, c. 22.
[5] 1718, 5 Geo. I, c. 21; 1720, 7 Geo. I. Stat. 1, c. 21; 1722, 9 Geo. I. c. 26; 1732, 5 Geo. II, c. 29. See the article on 'Interlopers' in the *Dictionary of Political Economy*. For the career of a typical interloper see the account of Thomas Pitt, afterwards Governor of Madras, and grandfather of the elder William Pitt, given in vol. iii. of Yule's edition of the Diary of William Hedges. The relations between interlopers and the East India Company in the preceding century are well illustrated by Skinner's case, which arose on a petition presented to Charles II soon after the Restoration. According to the statement signed by the counsel of Skinner there was a general liberty of trade to the East Indies in 1657 (under the Protectorate), and he in that year sent a trading ship there; but the Company's agents at Bantam, under pretence of a debt due to the Company, seized his ship and goods, assaulted him in his warehouse at Jamba in the island of Sumatra, and dispossessed him of the warehouse and of a little island called Barella. After various ineffectual attempts by the Crown to induce the Company to pay compensation, the case was, in 1665, referred by the king in council to the twelve judges, with the question whether Skinner could have full relief in any court of law. The answer was that the king's ordinary courts of justice could give relief in respect of the wrong to person and goods, but not in respect of the house and island. The House of Lords then resolved to relieve Skinner, but these proceedings gave rise to a serious conflict between the House of Lords and the House of Commons. See Hargrave's Preface to Hale's *Jurisdiction of the House of Lords*, p. cv.
[6] Charter granted by the Emperor Charles VI in 1722, but withdrawn in 1725.

Judicial charters of 1726 and 1753.

municipalities at Madras, Bombay, and Calcutta, and setting up or remodelling mayor's and other courts at each of these places. At each place the mayor and aldermen were to constitute a mayor's court with civil jurisdiction, subject to an appeal to the governor or president in council, and a further appeal in more important cases to the king in council. The mayor's court now also gave probates and exercised testamentary jurisdiction. The governor or president and the five seniors of the council were to be justices of the peace, and were to hold quarter sessions four times in the year, with jurisdiction over all offences except high treason. At the same time the Company were authorized, as in previous charters, to appoint generals and other military officers, with power to exercise the inhabitants in arms, to repel force by force, and to exercise martial law in time of war.

The capture of Madras by the French in 1746 having destroyed the continuity of the municipal corporation at that place, the charter of 1726 was surrendered and a fresh charter was granted in 1753.

The charter of 1753 expressly excepted from the jurisdiction of the mayor's court all suits and actions between the Indian natives only, and directed that these suits and actions should be determined among themselves, unless both parties submitted them to the determination of the mayor's courts. But, according to Mr. Morley, it does not appear that the native inhabitants of Bombay were ever actually exempted from the jurisdiction of the mayor's court, or that any peculiar laws were administered to them in that court.[1]

The charters of 1726 and 1753 have an important bearing on the question as to the precise date at which the English criminal law was introduced at the presidency towns. This question is discussed by Sir James Stephen with reference to the legality of Nuncomar's conviction for forgery; the point being whether the English statute of 1728 (2 Geo. II, c. 25) was or was not in force in Calcutta at the time of

[1] Morley's *Digest*, Introduction, p. clxix.

Nuncomar's trial. Sir James Stephen inclines to the opinion that English criminal law was originally introduced to some extent by the charter of 1661, but that the later charters of 1726, 1753, and 1774 must be regarded as acts of legislative authority whereby it was reintroduced on three successive occasions, as it stood at the three dates mentioned. If so, the statute of 1728 would have been in force in Calcutta in 1770 when Nuncomar's offence was alleged to have been committed, and at the time of his trial in 1775. But high judicial authorities in India have maintained a different view. According to their view British statute law was first given to Calcutta by the charter establishing the mayor's court in 1726, and British statutes passed after the date of that charter did not apply to India, unless expressly or by necessary implication extended to it.[1] Since the passing of the Indian Penal Code the question has ceased to be of practical importance.

Mutiny Act and Articles of War for Indian Forces.

In 1744 war broke out between England and France, and in 1746 their hostilities extended to India. These events led to the establishment of the Company's Indian Army. The first establishment of that army may, according to Sir George Chesney[2], be considered to date from the year 1748, 'when a small body of sepoys was raised at Madras, after the example set by the French, for the defence of that settlement during the course of the war which had broken out, four years previously, between France and England. At the same time a small European force was raised, formed of such sailors as could be spared from the ships on the coast, and of men smuggled on board the Company's vessels in England by the Company. An officer, Major Lawrence, was appointed by a commission from the Company to command these forces in India.' During the Company's earliest wars its army consisted mainly, for fighting purposes, of Europeans.

[1] Morley's *Digest*, Introduction, pp. xi, xxiii.

[2] *Indian Polity* (3rd ed.), ch. xii, which contains an interesting sketch of the rise and development of the Indian Army. The nucleus of a European force had been formed at Bombay in 1669, *supra*, p. 18.

It has been seen that by successive charters the Company had been authorized to raise troops and appoint officers. But the more extensive scale on which the military operations of the Company were now conducted made necessary further legislation for the maintenance of military discipline. An Act of 1754 [1] laid down for the Indian forces of the Company provisions corresponding to those embodied in the annual English Mutiny acts. It imposed penalties for mutiny, desertion, and similar offences, when committed by officers or soldiers in the Company's service. The Court of Directors might, in pursuance of an authority from the king, empower their president and council and their commanders-in chief to hold courts-martial for the trial and punishment of military offences. The king was also empowered to make articles of war for the better government of the Company's forces. The same Act contained a provision, repeated in subsequent Acts, which made oppression and other offences committed by the Company's presidents or councils cognizable and punishable in England. The Act of 1754 was amended by another Act passed in 1760 [2].

Charters of 1757 and 1758 as to booty and cession of territory.

The warlike operations which were carried on by the East India Company in Bengal at the beginning of the second half of the eighteenth century, and which culminated in Clive's victory at Plassey, led to the grant of two further charters to the Company.

A charter of 1757 recited that the Nabob of Bengal had taken from the Company, without just or lawful pretence and contrary to good faith and amity, the town and settlement of Calcutta, and goods and valuable commodities belonging to the Company and to many persons trading or residing within the limits of the settlement, and that the officers and agents of the Company at Fort St. George had concerted a plan of operations with Vice-Admiral Watson and others, the commanders of our fleet employed in those parts, for regaining the town and settlement and the goods and com-

[1] 27 Geo. II, c. 9. [2] 1 Geo. III, c. 14.

modities, and obtaining adequate satisfaction for their losses; and that it had been agreed between the officers of the Company, on the one part, and the vice-admiral and commanders of the fleet, on the other part, assembled in a council of war, that one moiety of all plunder and booty 'which shall be taken from the Moors' should be set apart for the use of the captors, and that the other moiety should be deposited till the pleasure of the Crown should be known. The charter went on to grant this reserved moiety to the Company, except any part thereof which might have been taken from any of the king's subjects. Any part so taken was to be returned to the owners on payment of salvage.

A charter of 1758, after reciting that powers of making peace and war and maintaining military forces had been granted to the Company by previous charters, and that many troubles had of late years arisen in the East Indies, and the Company had been obliged at very great expense to carry out a war in those parts against the French and likewise against the Nabob of Bengal and other princes or Governments in India, and that some of their possessions had been taken from them and since retaken, and forces had been maintained, raised, and paid by the Company in conjunction with some of the royal ships of war and forces, and that other territories or districts, goods, merchandises, and effects had been acquired and taken from some of the princes or Governments in India at variance with the Company by the ships and forces of the Company alone, went on to grant to the Company all such booty or plunder, ships, vessels, goods, merchandises, treasure, and other things as had since the charter of 1757 been taken or seized, *or should thereafter be taken*, from any of the enemies of the Company or any of the king's enemies in the East Indies by any ships or forces of the Company employed by them or on their behalf within their limits of trade. But this was only to apply to booty taken during hostilities begun and carried on in order to right and recompense the Company upon the goods, estate, or people of those parts from whom they should

sustain or have just and well-grounded cause to fear any injury, loss, or damage, or upon any people who should interrupt, wrong, or injure them in their trade within the limits of the charters, or should in a hostile manner invade or attempt to weaken or destroy the settlements of the Company or to injure the king's subjects or others trading or residing within the Company's settlements or in any manner under the king's protection within the limits of the Company. The booty must also have been taken in wars or hostilities or expeditions begun, carried on, and completed by the forces raised and paid by the Company alone or by the ships employed at their sole expense. And there was a saving for the royal prerogative to distribute the booty in such manner as the Crown should think fit in all cases where any of the king's forces should be appointed and commanded to act in conjunction with the ships or forces of the Company. There was also an exception for goods taken from the king's subjects, which were to be restored on payment of reasonable salvage. These provisions, though they gave rise to difficult questions at various subsequent times, have now become obsolete. But the charter contained a further power which is still of practical importance. It expressly granted to the Company power, by any treaty of peace made between the Company, or any of their officers, servants, or agents, and any of the Indian princes or Governments, to cede, restore, or dispose of any fortresses, districts, or territories acquired by conquest from any of the Indian princes or Governments during the late troubles between the Company and the Nabob of Bengal, or which should be acquired by conquest in time coming, subject to a proviso that the Company should not have power to cede, restore, or dispose of any territory acquired from the subjects of any European Power without the special licence and approbation of the Crown. This power has been relied on as the foundation, or one of the foundations, of the power of the Government of India to cede territory.[1]

[1] *Lachmi Narayan* v. *Raja Pratab Singh*, I. L. R. 2 All 1.

The year 1765 marks a turning-point in Anglo-Indian history, and may be treated as commencing the period of territorial sovereignty by the East India Company. The successes of Clive and Lawrence in the struggle between the English and French and their respective allies had extinguished French influence in the south of India. The victories of Plassey[1] and Baxar[1] made the Company masters of the north-eastern provinces of the peninsula. In 1760 Clive returned from Bengal to England. In 1765, after five years of confusion, he went back to Calcutta as Governor and Commander-in-Chief of Bengal, armed with extraordinary powers. His administration of eighteen months was one of the most memorable in Indian history. The beginning of our Indian rule dates from the second governorship of Clive, as our military supremacy had dated from his victory at Plassey. Clive's main object was to obtain the substance, though not the name, of territorial power, under the fiction of a grant from the Mogul Emperor.

The Company as territorial sovereign.

This object was obtained by the grant from Shah Alam of the Diwani or fiscal administration of Bengal, Bihar, and Orissa.[2]

Grant of the Diwani.

The criminal jurisdiction in the provinces was still left with the puppet Nawab, who was maintained at Moorshedabad, whilst the Company were to receive the revenues and to maintain the army. But the actual collection of the revenues still remained until 1772 in the hands of native officials.

Thus a system of dual government was established, under which the Company, whilst assuming complete control over the revenues of the country, and full power of maintaining or disbanding its military forces, left in other hands the responsibility for maintaining law and order through the agency of courts of law.

The great events of 1765 produced immediate results in

[1] Plassey (Clive) June 23, 1757; Baxar (Munro), October 23, 1764.

[2] The grant is dated August 17, 1765. The 'Orissa' of the grant corresponds to what is now the district of Midnapur, and is not to be confused with the modern Orissa, which was not acquired until 1803.

England. The eyes of the proprietors of the Company were dazzled by golden visions. On the dispatch bearing the grant of the Diwani being read to the Court of Proprietors they began to clamour for an increase of dividend, and, in spite of the Company's debts and the opposition of the directors, they insisted on raising the dividend in 1766 from 6 to 10 per cent., and in 1767 to 12½ per cent.

At the same time the public mind was startled by the enormous fortunes which 'Nabobs' were bringing home, and the public conscience was disturbed by rumours of the unscrupulous modes in which these fortunes had been amassed. Constitutional questions were also raised as to the right of a trading company to acquire on its own account powers of territorial sovereignty.[1] The intervention of Parliament was imperatively demanded.

Legislation of 1767.

On November 25, 1766, the House of Commons resolved to appoint a committee of the whole house to inquire into the state and condition of the East India Company, and the proceedings of this committee led to the passage in 1767 of five Acts with reference to Indian affairs. The first disqualified a member of any company for voting at a general court unless he had held his qualification for six months, and prohibited the making of dividends except at a half-yearly or quarterly court.[2] Although applying in terms to all companies, the Act was immediately directed at the East India Company, and its object was to check the trafficking in votes and other scandals which had recently disgraced their proceedings. The second Act[3] prohibited the East India Company from making any dividend except in pursuance of a resolution passed at a general court after due notice, and directly overruled the recent resolution of the Company by forbidding them to declare any dividend in excess of 10 per cent. per annum until the next session of Parliament. The third and fourth Acts[4] embodied the terms of a bargain to which the Company

[1] For the arguments on this question, see Lecky, ch. xii.
[2] 7 Geo. III, c. 48. [3] 7 Geo. III, c. 49. [4] 7 Geo. III, cc. 56, 57.

had been compelled to consent. The Company were required to pay into the Exchequer an annual sum of £400,000 for two years from February 1, 1767, and in consideration of this payment were allowed to retain their territorial acquisitions and revenues for the same period.[1] At the same time certain duties on tea were reduced on an undertaking by the Company to indemnify the Exchequer against any loss arising from the reduction. Thus the State claimed its share of the Indian spoil, and asserted its rights to control the sovereignty of Indian territories.

In 1768 the restraint on the dividend was continued for another year,[2] and in 1769 a new agreement was made by Parliament with the East India Company for five years, during which time the Company were guaranteed the territorial revenues, but were bound to pay an annuity of £400,000, and to export a specified quantity of British goods. They were at liberty to increase their dividends during that time to 12½ per cent. provided the increase did not exceed 1 per cent. If, however, the dividend should fall below 10 per cent. the sum to be paid to the Government was to be proportionately reduced. If the finances of the Company enabled them to pay off some specified debts, they were to lend some money to the public at 2 per cent.[3]

These arrangements were obviously based on the assumption that the Company were making enormous profits, out of which they could afford to pay, not only liberal dividends to their proprietors, but a heavy tribute to the State. The assumption was entirely false. Whilst the servants of the Company were amassing colossal fortunes, the Company itself was advancing by rapid strides to bankruptcy. 'Its debts were already estimated at more than six millions sterling. It supported an army of about 30,000 men. It paid about

[1] This was apparently the first direct recognition by Parliament of the territorial acquisitions of the Company. See *Damodhar Gordhan* v. *Deoram Kanji* (the *Bhaunagar* case), L. R. 1 App. Cas. 332, 342.

[2] 8 Geo. III, c. 1. [3] 9 Geo. III, c. 24.

one million sterling a year in the form of tributes, pensions and compensations to the emperor, the Nabob of Bengal, and other great native personages. Its incessant wars, though they had hitherto been always successful, were always expensive, and a large portion of the wealth which should have passed into the general exchequer was still diverted to the private accounts of its servants.'[1] Two great calamities hastened the crisis. In the south of India, Hyder Ali harried the Carnatic, defeated the English forces, and dictated peace on his own terms in 1769. In the north, the great famine of 1770 swept away more than a third of the inhabitants of Bengal.

Pecuniary embarrassments in 1772.

Yet the directors went on declaring dividends at the rates of 12 and 12½ per cent. At last the crash came. In the spring session of 1772 the Company had endeavoured to initiate legislation for the regulation of their affairs. But their Bill was thrown out on the second reading, and in its place a select committee of inquiry was appointed by the House of Commons. In June, 1772, Parliament was prorogued, and in July the directors were obliged to confess that the sum required for the necessary payments of the next three months was deficient to the extent of £1,293,000. In August the chairman and deputy chairman waited on Lord North to inform him that nothing short of a loan of a million from the public could save the Company from ruin.

In November, 1772, Parliament met again, and its first step was to appoint a new committee with instructions to hold a secret inquiry into the Company's affairs. This committee presented its first report with unexpected rapidity, and on its recommendation Parliament in December, 1772, passed an Act prohibiting the directors from sending out to India a commission of supervision on the ground that the Company would be unable to bear the expense.[2]

egisla-on of '73.

In 1773 the Company came to Parliament for pecuniary assistance, and Lord North's Government took advantage

[1] Lecky, iv. 273.

[2] 13 Geo III, c. 9.

of the situation to introduce extensive alterations into the system of governing the Company's Indian possessions.[1]

In spite of vehement opposition, two Acts were passed through Parliament by enormous majorities. By one of these Acts[2] the ministers met the financial embarrassments of the Company by a loan of £1,400,000 at 4 per cent., and agreed to forgo the Company's debt of £400,000 till this loan had been discharged. The Company were restricted from declaring any dividend above 6 per cent. till the new loan had been discharged, and above 7 per cent. until the bond debt was reduced to £1,500,000. They were obliged to submit their accounts every half-year to the Treasury, they were restricted from accepting bills drawn by their servants in India for above £300,000 a year, and they were required to export to the British settlements within their limits British goods of a specified value.

The other Act was that commonly known as the Regulating Act.[3] To understand the object and effect of its provisions brief reference must be made to the constitution of the Company at the time when it was passed. The Regulating Act of 1773.

At home the Company were still governed in accordance with the charter of 1698, subject to a few modifications of detail made by the legislation of 1767. There was a Court of Directors and a General Court of Proprietors. Every holder

[1] The history of the East India Company tends to show that whenever a chartered company undertakes territorial sovereignty on an extensive scale the Government is soon compelled to accept financial responsibility for its proceedings, and to exercise direct control over its actions. The career of the East India Company as a territorial power may be treated as having begun in 1765, when it acquired the financial administration of the provinces of Bengal, Bihar, and Orissa. Within seven years it was applying to Parliament for financial assistance. In 1773 its Indian operations were placed directly under the control of a governor-general appointed by the Crown, and in 1784 the Court of Directors in England were made directly subordinate to the Board of Control—that is, to a minister of the Crown.

[2] 13 Geo. III, c. 64.

[3] 13 Geo. III, c. 63. This Act is described in its 'short title' as an Act of 1772 because Acts then dated from the beginning of the session in which they were passed.

of £500 stock had a vote in the Court of Proprietors, but the possession of £2,000 stock was the qualification for a director. The directors were twenty-four in number, and the whole of them were re-elected every year.

In India each of the three presidencies was under a president or governor and council, appointed by commission of the Company, and consisting of its superior servants. The numbers of the council varied,[1] and some of its members were often absent from the presidency town, being chiefs of subordinate factories in the interior of the country. All power was lodged in the president and council jointly, and nothing could be transacted except by a majority of votes. So unworkable had the council become as an instrument of government, that in Bengal Clive had been compelled to delegate its functions to a select committee.

The presidencies were independent of each other. The Government of each was absolute within its own limits, and responsible only to the Company in England.

The civil and military servants of the Company were classified, beginning from the lowest rank, as writers, factors, senior factors, and merchants. Promotion was usually by seniority. Their salaries were extremely small,[2] but they made enormous profits by trading on their own account, and by money drawn from extortions and bribes. The select committee of 1773 published an account of such sums as had been proved and acknowledged to have been distributed by the princes and other natives of Bengal from the year 1757 to 1766, both included. They amounted to £5,940,987, exclusive of the grant made to Clive after the battle of Plassey. Clive, during his second governorship, made great efforts to put down the abuses of private trade, bribery, and extortion,

[1] They were usually from twelve to sixteen.

[2] In the early part of the eighteenth century a writer, after five years' residence in India, received £10 a year, and the salaries of the higher ranks were on the same scale. Thus a member of council had £80 a year. When Thomas Pitt was appointed Governor of Madras in 1698 he received £300 a year for salary and allowances, and £100 for outfit.

and endeavoured to provide more legitimate remunerations for the higher classes of the Company's civil and military servants by assigning to them specific shares in the profits derived from the salt monopoly. According to his estimates the profits from this source of a commissioner or colonel would be at least £7,000 a year; those of a factor or major, £2,000.[1]

At the presidency towns, civil justice was administered in the mayors' courts and courts of request, criminal justice by the justices in petty and quarter sessions. In 1772 Warren Hastings became Governor of Bengal, and took steps for organizing the administration of justice in the interior of that province. In the previous year the Court of Directors had resolved to assert in a more active form the powers given them by the grant of the Diwani in 1765, and in a letter of instructions to the president and council at Fort William had announced their resolution to 'stand forth as diwan,' and by the agency of the Company's servants to take upon themselves the entire care and management of the revenues.[2] In pursuance of these instructions the Court of Directors appointed a committee, consisting of the Governor of Bengal and four members of council, and these drew up a report, comprising a plan for the more effective collection of the revenue and the administration of justice. This plan was adopted by the Government on August 21, 1772, and many of its rules were long preserved in the Bengal Code of Regulations.[3]

In pursuance of this plan, a board of revenue was created, consisting of the president and members of the council, and the treasury was removed from Moorshedabad to Calcutta. The supervisors of revenue became collectors, and with them

[1] See Lecky, iv. 266, 270. [2] Letter of August 28, 1771.

[3] The office of 'diwan' implied, not merely the collection of the revenue, but the administration of civil justice. The 'nizamut' comprised the right of arming and commanding the troops, and the management of the whole of the police of the country, as well as the administration of criminal justice. Morley, *Digest*, p. xxxi. See a fuller account of Warren Hastings's plan, ibid. p. xxxiv.

were associated native officers, styled 'diwans.' Courts were established in each collectorship, one styled the Diwani, a civil court, and the other the Faujdari, a criminal court. Over the former the collector presided in his quality of king's diwan. In the criminal court the kazi and mufti of the district sat to expound the Mahomedan law. Superior courts were established at the chief seat of government, called the Sadr Diwani Adalat and the Sadr Nizamat Adalat. These courts theoretically derived their jurisdiction and authority, not from the British Crown, but from the native Government in whose name the Company acted as administrators of revenue. They were Company's courts, not king's courts.

Provisions of Regulating Act.

By the Regulating Act of 1773 the qualification to vote in the Court of Proprietors was raised from £500 to £1,000, and restricted to those who had held their stock for twelve months. The directors, instead of being annually elected, were to sit for four years, a quarter of the number being annually renewed.

For the government of the Presidency of Fort William in Bengal, a governor-general and four counsellors were appointed, and the Act declared that the whole civil and military government of this presidency, and also the ordinary management and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Bihar, and Orissa, should, during such time as the territorial acquisitions and revenues remained in the possession of the Company, be vested in the governor-general and council of the Presidency of Fort William, in like manner as they were or at any time theretofore might have been exercised by the president and council or select committee in the said kingdoms. The avoidance of any attempt to define, otherwise than by reference to existing facts, the nature or extent of the authority claimed or exercised by the Crown over the Company in the new territorial acquisitions is very noticeable, and is characteristic of English legislation.

The first governor-general and counsellors were named in the Act. They were to hold office for five years,[1] and were not to be removable in the meantime, except by the king on the representation of the Court of Directors. A casual vacancy in the office of governor-general during these five years was to be supplied by the senior member of council. A casual vacancy in the office of member of council was during the same time to be filled by the Court of Directors with the consent of the Crown. At the end of the five years the patronage was to be vested in the Company. The governor-general and council were to be bound by the votes of a majority of those present at their meetings, and in the case of an equal division the governor-general was to have a casting vote.

Warren Hastings, who had been appointed Governor of Bengal in 1772, was to be the first governor-general. The first members of his council were to be General Clavering, Colonel Monson, Mr. Barwell, and Mr. Francis.

The supremacy of the Bengal Presidency over the other presidencies was definitely declared. The governor-general and council were to have power of superintending and controlling the government and management of the presidencies of Madras, Bombay, and Bencoolen[2], so far and in so much as that it should not be lawful for any Government of the minor presidencies to make any orders for commencing hostilities, or declaring or making war, against any Indian princes or powers, or for negotiating or concluding any treaty with any such prince or power without the previous consent

[1] It has been suggested that this enactment is the origin of the custom under which the tenure of the more important offices in India, such as those of governor-general, governor, lieutenant-governor, and member of council, is now limited to five years. The limitation is not imposed by statute or by the instrument of appointment.

[2] Bencoolen, otherwise Fort Marlborough, is in Sumatra. It was founded by the English in 1686, and was given to the Dutch by the London Treaty, March 11, 1824, in exchange for establishments on the continent of India and for the town and fort of Malacca and its dependencies, which were handed over to the East India Company by 5 Geo. IV, c. 108.

of the governor-general and council, except in such cases of imminent necessity as would render it dangerous to postpone such hostilities or treaties until the arrival of their orders, and except also in cases where special orders had been received from the Company.[1] A president and a council offending against these provisions might be suspended by order of the governor-general and council. The governors of the minor presidencies were to obey the order of the governor-general and council, and constantly and dutifully to transmit to them advice and intelligence of all transactions and matters relating to the government, revenues, or interest of the Company.

Provisions followed for regulating the relations of the governor-general and his council to the Court of Directors, and of the directors to the Crown. The governor-general and council were to obey the orders of the Court of Directors and keep them constantly informed of all matters relating to the interest of the Company. The directors were, within fourteen days after receiving letters or advices from the governor-general and council, to transmit to the Treasury copies of all parts relating to the management of the Company's revenue, and to transmit to a secretary of state copies of all parts relating to the civil or military affairs and government of the Company.

Important changes were made in the arrangements for the administration of justice in Bengal. The Crown was empowered to establish by charter a supreme court of judicature at Fort William, consisting of a chief justice and three other judges, who were to be barristers of five years' standing, and were to be appointed by the Crown. The supreme court was empowered to exercise civil, criminal, admiralty, and ecclesiastical jurisdiction, and to appoint such clerks and other ministerial officers with such reasonable salaries as should be approved by the governor-general and council, and to

[1] This was the first assertion of Parliamentary control over the treaty relations of the Company.

establish such rules of procedure and do such other things as might be found necessary for the administration of justice and the execution of the powers given by the charter. The court was declared to be at all times a court of record and a court of oyer and terminer and jail delivery in and for the town of Calcutta and factory of Fort William and the factories subordinate thereto. Its jurisdiction was declared to extend to all British subjects who should reside in the kingdoms or provinces of Bengal, Bihar, and Orissa, or any of them, under the protection of the United Company. And it was to have 'full power and authority to hear and determine all complaints against any of His Majesty's subjects for crimes, misdemeanours, or oppressions, and also to entertain, hear, and determine any suits or actions whatsoever against any of His Majesty's subjects in Bengal, Bihar, and Orissa, and any suit, action, or complaint against any person employed by or in the service of the Company or of any of His Majesty's subjects.'

But on this jurisdiction two important limitations were imposed.

First, the court was not to be competent to hear or determine any indictment or information against the governor-general or any of his council for any offence, not being treason or felony[1], alleged to have been committed in Bengal, Bihar, or Orissa. And the governor-general and members of his council were not to be liable to be arrested or imprisoned in any action, suit, or proceeding in the supreme court.[2]

Then, with respect to proceedings in which natives of the country were concerned, it was provided that the court should hear and determine 'any suits or actions whatsoever of any of His Majesty's subjects against any inhabitant of India residing in any of the said kingdoms or provinces of Bengal, Bihar, or Orissa,' on any contract in writing where

[1] Could it then try the governor general for treason or felony?

[2] The saving appears to be limited to civil proceedings. It would exempt against arrest on mesne process.

the cause of action exceeded 500 rupees, and where the said inhabitant had agreed in the contract that, in case of dispute, the matter should be heard and determined in the supreme court. Such suits or actions might be brought in the first instance before the supreme court, or by appeal from any of the courts established in the provinces.

This authority, though conferred in positive, not negative, terms, appears to exclude by implication civil jurisdiction in suits by British subjects against 'inhabitants' of the country, except by consent of the defendant, and is silent as to jurisdiction in civil suits by 'inhabitants' against British subjects, or against other 'inhabitants.'

An appeal against the supreme court was to lie to the king in council, subject to conditions to be fixed by the charter.

All offences of which the supreme court had cognizance were to be tried by a jury of British subjects resident in Calcutta.

The governor-general and council and the chief justice and other judges of the supreme court were to act as justices of the peace, and for that purpose to hold quarter sessions.

Liberal salaries were provided out of the Company's revenues for the governor-general and his council and the judges of the supreme court. The governor-general was to have annually £25,000, each member of his council £10,000, the chief justice £8,000, and each puisne judge £6,000.

The governor-general and council were to have powers 'to make and issue such rules, ordinances, and regulations for the good order and civil government' of the Company's settlement at Fort William, and the subordinate factories and places, as should be deemed just and reasonable, and should not be repugnant to the laws of the realm, and to set, impose, inflict, and levy reasonable fines and forfeitures for their breach.

But these rules and regulations were not to be valid until duly registered and published in the supreme court, with the assent and approbation of the court, and they might, in effect,

be set aside by the king in council. A copy of them was to be kept affixed conspicuously in the India House, and copies were also to be sent to a secretary of state.

The remaining provisions of the Act were aimed at the most flagrant of the abuses to which public attention had been recently directed. The governor-general and members of his council, and the chief justice and judges of the supreme court were prohibited from receiving presents or being concerned in any transactions by way of traffic, except the trade and commerce of the Company.

No person holding or exercising any civil or military office under the Crown or the Company in the East Indies was to receive directly or indirectly any present or reward from any of the Indian princes or powers, or their ministers or agents, or any of the nations of Asia. Any offender against this provision was to forfeit double the amount received, and might be removed to England. There was an exception for the professional remuneration of counsellors at law, physicians, surgeons, and chaplains.

No collector, supervisor, or any other of His Majesty's subjects employed or concerned in the collection of revenues or administration of justice in the provinces of Bengal, Bihar, and Orissa was, directly or indirectly, to be concerned in the buying or selling of goods by way of trade, or to intermeddle with or be concerned in the inland trade in salt, betel-nut, tobacco or rice, except on the Company's account. No subject of His Majesty in the East Indies was to lend money at a higher rate of interest than 12 per cent. per annum. Servants of the Company prosecuted for breach of public trust, or for embezzlement of public money or stores, or for defrauding the Company, might, on conviction before the supreme court at Calcutta or any other court of judicature in India, be fined and imprisoned, and sent to England. If a servant of the Company was dismissed for misbehaviour, he was not to be restored without the assent of three-fourths both of the directors and of the proprietors.

If any governor-general, governor, member of council judge of the supreme court, or any other person for the time being employed in the service of the Company committed any offence against the Act, or was guilty of any crime, misdemeanour, or offence against any of His Majesty's subjects, or any of the inhabitants of India, he might be tried and punished by the Court of King's Bench in England.

Charter of 1774 constituting supreme court at Calcutta.

The charter of justice authorized by the Regulating Act was dated March 26, 1774, and remained the foundation of the jurisdiction exercised by the supreme court at Calcutta until the establishment of the present high court under the Act of 1861.[1] The first chief justice was Sir Elijah Impey. His three colleagues were Chambers, Lemaistre, and Hyde.

Difficulties arising out of Regulating Act.

Warren Hastings retained the office of governor-general until 1785, when he was succeeded temporarily by Sir John Macpherson, and, eventually, by Lord Cornwallis. His appointment, which was originally for a term of five years, was continued by successive Acts of Parliament. His administration was distracted by conflicts between himself and his colleagues on the supreme council, and between the supreme council and the supreme court, conflicts traceable to the defective provisions of the Regulating Act.

Difficulties in the council.

Of Hastings's four colleagues, one, Barwell, was an experienced servant of the Company, and was in India at the time of his appointment. The other three, Clavering, Monson, and Francis, were sent out from England, and arrived in Calcutta with the judges of the new supreme court.

Barwell usually supported Hastings. Francis, Clavering, and Monson usually opposed him. Whilst they acted together, Hastings was in a minority, and found his policy thwarted and his decisions overruled. In 1776 he was reduced to such depression that he gave his agents in England a conditional authority to tender his resignation. The Court of Directors accepted his resignation on this authority, and took steps to supply his place. But in the meantime Clavering died

[1] Copy printed in Morley's *Digest*, ii. 549.

(November, 1776) and Hastings was able, by means of his casting vote, to maintain his supremacy in the council. He withdrew his authority to his English agent, and obtained from the judges of the supreme court an opinion that his resignation was invalid. These proceedings possibly occasioned the provision which was contained in the Charter Act of 1793, was repeated in the Act of 1833, and is still law, that the resignation of a governor-general is not valid unless signified by a formal deed.[1]

Difficulties between supreme council and supreme court.

The provisions of the Act of 1773 are obscure and defective as to the nature and extent of the authority exercisable by the governor-general and his council, as to the jurisdiction of the supreme court, and as to the relation between the Bengal Government and the court. The ambiguities of the Act arose partly from the necessities of the case, partly from a deliberate avoidance of new and difficult questions on constitutional law. The situation created in Bengal by the grant of the Diwani in 1765, and recognized by the legislation of 1773, resembled what in the language of modern international law is called a protectorate. The country had not been definitely annexed;[2] the authority of the Delhi emperor and of his native vicegerent was still formally recognized; and the attributes of sovereignty had been divided between them and the Company in such proportions that whilst the substance had passed to the latter, a shadow only remained with the former. But it was a shadow with which potent conjuring tricks could be performed. Whenever the Company found it convenient, they could play off the authority derived from the Mogul against the authority derived from the British law, and justify under the one proceedings which

[1] See 3 & 4 Will. IV, c. 85, s. 79. Digest, s. 82.

[2] On May 10, 1773, the House of Commons, on the motion of General Burgoyne, passed two resolutions, (1) that all acquisitions made by military force or by treaty with foreign powers do of right belong to the State; (2) that to appropriate such acquisitions to private use is illegal. But the nature and extent of the sovereignty exercised by the Company was for a long time doubtful. See *Mayor of Lyons* v. *East India Company*, 3 State Trials, new series, 647, 707; 1 Moore, P. C. 176.

it would have been difficult to justify under the other. In the one capacity the Company were the all-powerful agents of an irresponsible despot; in the other they were tied and bound by the provisions of charters and Acts of Parliament. It was natural that the Company's servants should prefer to act in the former capacity. It was also natural that their Oriental principles of government should be regarded with dislike and suspicion by English statesmen, and should be found unintelligible and unworkable by English lawyers steeped in the traditions of Westminster Hall.

In the latter half of the nineteenth century we became familiar with situations of this kind, and we have devised appropriate formulae for dealing with them. The modern practice has been to issue an Order in Council under the Foreign Jurisdiction Act, establishing consular and other courts of civil and criminal jurisdiction, and providing them with codes of procedure and of substantive law, which are sometimes derived from Anglo-Indian sources. The jurisdiction is to be exercised and the law is to be applied in cases affecting British subjects, and, so far as is consistent with international law and comity, in cases affecting European or American foreigners. But the natives of the country are, so far as is compatible with regard to principles of humanity, left in enjoyment of their own laws and customs. If a company has been established for carrying on trade or business, its charter is so framed as to reserve the supremacy and prerogatives of the Crown. In this way a rough-and-ready system of government is provided, which would often fail to stand the application of severe legal tests, but which supplies an effectual mode of maintaining some degree of order in uncivilized or semi-civilized countries.[1]

But in 1773 both the theory and the experience were lacking, which are requisite for adapting English institutions

[1] See the Orders in Council under the successive Foreign Jurisdiction Acts, printed in the Statutory Rules and Orders Revised, and the charters granted to the Imperial British East Africa Company (Hertslet, *Map of Africa by Treaty*, i. 118), to the Royal British South Africa Company (ibid. i. 274), and to the Royal Niger Company (ibid. i. 446).

to new and foreign circumstances. For want of such experience England was destined to lose her colonies in the Western hemisphere. For want of it mistakes were committed which imperilled the empire she was building up in the East. The *Regulating Act* provided insufficient guidance as to points on which both the Company and the supreme court were likely to go astray; and the charter by which it was supplemented did not go far to supply its deficiencies. The language of both instruments was vague and inaccurate. They left unsettled questions of the gravest importance. The Company was vested with supreme administrative and military authority. The Court was vested with supreme judicial authority. Which of the two authorities was to be paramount? The court was avowedly established for the purpose of controlling the actions of the Company's servants, and preventing the exercise of oppression against the natives of the country. How far could it extend its controlling power without sapping the foundations of civil authority? The members of the supreme council were personally exempt from the coercive jurisdiction of the court. But how far could the court question and determine the legality of their orders?

Both the omissions from the Act and its express provisions were such as to afford room for unfortunate arguments and differences of opinion.

What law was the supreme court to administer? The Act was silent. Apparently it was the unregenerate English law, insular, technical, formless, tempered in its application to English circumstances by the quibbles of judges and the obstinacy of juries, capable of being an instrument of the most monstrous injustice when administered in an atmosphere different from that in which it had grown up.

To whom was this law to be administered? To British subjects and to persons in the employment of the Company. But whom did the first class include? Probably only the class now known as European British subjects, and probably not the native 'inhabitants of India' residing in the three

provinces, except such of them as were resident in the town of Calcutta. But the point was by no means clear.[1]

What constituted employment by the Company? Was a native landowner farming revenues so employed? And in doubtful cases on whom lay the burden of proving exemption from or subjection to the jurisdiction?

These were a few of the questions raised by the Act and charter, and they inevitably led to serious conflicts between the council and the court.

In the controversies which followed there were, as Sir James Stephen observes[2], three main heads of difference between the supreme council and the supreme court.

These were, first, the claims of the court to exercise jurisdiction over the whole native population, to the extent of making them plead to the jurisdiction if a writ was served on them. The quarrel on this point culminated in what was known as the Cossijurah case, in which the sheriff and his officers, when attempting to execute a writ against a zemindar, were driven off by a company of sepoys acting under the orders of the council. The action of the council was not disapproved by the authorities in England, and thus this contest ended practically in the victory of the council and the defeat of the court.

The second question was as to the jurisdiction of the court over the English and native officers of the Company employed in the collection of revenues for corrupt or oppressive acts done by them in their official capacity. This jurisdiction the Company were compelled by the express provisions of the Regulating Act to admit, though its exercise caused them much dissatisfaction.

The third question was as to the right of the supreme court to try actions against the judicial officers of the Company for acts done in the execution of what they believed, or said they believed, to be their legal duty. This question arose in the

[1] See *In the matter of Ameer Khan*, 6 Bengal Law Reports, 392, 443.
[2] *Nuncomar and Impey*, ii. 237.

famous Patna case, in which the supreme court gave judgement with heavy damages to a native plaintiff in an action against officers of the Patna provincial council, acting in its judicial capacity. Impey's judgement in this case was made one of the grounds of impeachment against him, but is forcibly defended by Sir James Stephen against the criticisms of Mill and others, as being not only technically sound, but substantially just. Hastings endeavoured to remove the friction between the supreme court and the country courts by appointing Impey judge of the court of Sadr Diwani Adalat, and thus vesting in him the appellate and revisional control over the country courts which had been nominally vested in, but never exercised by, the supreme court. Had he succeeded, he would have anticipated the arrangements under which, some eighty years later, the court of Sadr Diwani Adalat and the supreme court were fused into the high court. But Impey compromised himself by drawinga large salary from his new office in addition to that which he drew as chief justice, and his acceptance of a post tenable at the pleasure of the Company was held to be incompatible with the independent position which he was intended to occupy as chief justice of the supreme court.

Amending Act of 1781.

In the year 1781 a Parliamentary inquiry was held into the administration of justice in Bengal, and an amending Act of that year[1] settled some of the questions arising out of the Act of 1773.

The governor-general and council of Bengal were not to be subject, jointly or severally, to the jurisdiction of the supreme court for anything counselled, ordered, or done by them in their public capacity. But this exemption did not apply to orders affecting British subjects.[2]

The supreme court was not to have or exercise any jurisdiction in matters concerning the revenue, or concerning any act done in the collection thereof, according to the usage and practice of the country, or the regulations of the governor-general and council.[3]

[1] 21 Geo. III, c. 70. [2] See Digest, s. 106. [3] Ibid. s. 101.

No person was to be subject to the jurisdiction of the supreme court by reason only of his being a 'landowner, landholder, or farmer of land or of land rent, or for receiving a payment or pension in lieu of any title to, or ancient possession of, land or land rent, or for receiving any compensation of share of profits for collecting of rents payable to the public out of such lands or districts as are actually farmed by himself, or those who are his under-tenants in virtue of his farm, or for exercising within the said lands and farms any ordinary or local authority commonly annexed to the possession or farm thereof or by reason of his becoming security for the payment of rent.'

No person was, by reason of his being employed by the Company, or by the governor-general and council, or by a native or descendant of a native of Great Britain, to become subject to the jurisdiction of the supreme court, in any matter of inheritance or succession to lands or goods, or in any matter of dealing or contract between parties, except in actions for wrongs or trespasses, or in civil suits by agreement of the parties.

Registers were to be kept showing the names, &c., of natives employed by the Company.

The supreme court was, however, to have jurisdiction in all manner of actions and suits against all and singular the inhabitants of Calcutta 'provided that their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Gentus by the laws and usages of Gentus; and where only one of the parties shall be a Mahomedan or Gentu by the laws and usages of the defendant.'[1]

[1] This proviso was taken from Warren Hastings's plan for the administration of justice prepared and adopted in 1772, when the Company first 'stood forth as diwan.' It is interesting as a recognition of the personal law which played so important a part during the break-up of the Roman Empire, but has, in the West, been gradually superseded by territorial law. As to the effect of this and similar enactments, see Digest, s. 108 and note thereon.

In order that regard should be had to the civil and religious usages of the said natives, the rights and authorities of fathers of families, and masters of families, according as the same might have been exercised by the Gentu or Mahomedan law, were to be preserved to them within their families, nor was any act done in consequence of the rule and law of caste, respecting the members of the said families only, to be held and adjudged a crime, although it might not be held justifiable by the laws of England.

Rules and forms for the execution of process in the supreme court were to be accommodated to the religion and manners of the natives, and sent to the Secretary of State, for approval by the king.

The appellate jurisdiction of the governor-general and council in country cases was recognized and confirmed in cautiously general terms. 'Whereas the governor-general and council, or some committee thereof or appointed thereby, do determine on appeals and references from the country or provincial courts in civil cases,' 'the said court shall and lawfully may hold all such pleas and appeals, in the manner and with such powers as it hitherto hath held the same, and shall be deemed in law a court of record; and the judgements therein given shall be final and conclusive, except upon appeal to His Majesty, in civil suits only, the value of which shall be five thousand pounds and upwards.' The same court was further declared to be a court to hear and determine on all offences, abuses, and extortions committed in the collection of revenue, and on severities used beyond what shall appear to the said court customary or necessary to the case, and to punish the same according to sound discretion provided the said punishment does not extend to death, or maiming, or perpetual imprisonment.[1]

No action for wrong or injury was to lie in the supreme

[1] See Harington's *Analysis*, i. 22. But it seems very doubtful whether the council or any of the council had in fact ever exercised jurisdiction as a court of Sadr Diwani Adalat. See *Nuncomar and Impey*, ii. 189.

court against any person whatsoever exercising any judicial office in the country courts for any judgement, decree, or order of the court, nor against any person for any act done by or in virtue of the order of the court.

The defendants in the Patna case were to be released from prison on the governor-general and council giving security (which they were required to do) for the damages recovered in the action against them; and were to be at liberty to appeal to the king in council against the judgement, although the time for appealing under the charter had expired.

The decision of Parliament, as expressed in the Act of 1781, was substantially in favour of the council and against the court on all points. Sir James Stephen argues that the enactment of this Act 'shows clearly that the supreme court correctly interpreted the law as it stood.'[1] But this contention seems to go too far. A legislative reversal of a judicial decision shows that, in the opinion of the legislature, the decision is not substantially just, but must not necessarily be construed as an admission that the decision is technically correct. It is often more convenient to cut a knot by legislation than to attempt its solution by the dilatory and expensive way of appeal.

The Act of 1781 contained a further provision which was of great importance in the history of Indian legislation. It empowered the governor-general and council 'from time to time to frame regulations for the provincial courts and councils.' Copies of these regulations were to be sent to the Court of Directors and to the Secretary of State. They might be disallowed or amended by the king in council, but were to remain in force unless disallowed within two years.

On assuming the active duties of revenue authority in Bengal in 1772, the president and council had made general regulations for the administration of justice in the country by the establishment of civil and criminal courts. And by the Regulating Act of 1773 the governor-general and council

[1] *Nuncomar and Impey*, ii. 192.

were expressly empowered to make rules, ordinances, and regulations. But regulations made under this power had to be registered in the supreme court,[1] with the consent and approbation of that court. In 1780 the governor-general and council made regulations, in addition to those of 1772, for the more effectual and regular administration of justice in the provincial civil courts, and in 1781 they issued a revised code superseding all former regulations. If these regulations were made under the power given by the Act of 1773 they ought to have been registered. But it does not appear that they were so registered, and after the passing of the Act of 1781 the governor-general and council preferred to act under the powers which enabled them to legislate without any reference to the supreme court. However, notwithstanding the limited purpose for which the powers of 1781 were given, it was under those powers that most of the regulation laws for Bengal purported to be framed. Regulations so made did not require registration or approval by the supreme court. But it was for some time doubtful whether they were binding on that court.[2]

The Act of 1781 for defining the powers of the supreme court was not the only legislation of that year affecting the East India Company. The Company had by 1778 duly repaid their loan of £1,400,000 from the Exchequer, and they subsequently reduced the bond debt to the limits prescribed by an Act of that year[3]. By an Act passed in 1781[4] the Company were required to pay a single sum of £400,000 to the public in discharge of all claims to a share in their

[1] As French laws had to be registered by the *Parlement*, and as Acts of Parliament affecting the Channel Islands still have to be registered by the Royal Courts.

[2] See Cowell's *Tagore Law Lectures*, 1872, and *In the matter of Ameer Khan*, 6 Bengal Law Reports, 392, 408. The power of legislation was recognized and extended in 1797 by 37 Geo. III, c. 142, s. 8. See below, p. 71.

[3] 19 Geo. III, c. 61.

[4] 21 Geo III, c. 65. The Company were unable to meet the payments required by this Act, and successive Acts had to be passed for extending the terms fixed for payment (22 Geo. III, c. 51; 23 Geo. III, cc. 36, 83; 24 Geo III, sess. 1, c. 3).

territorial revenues up to March 1 in that year, and their former privileges were extended until three years' notice after March 1, 1791. By the same Act they were authorized to pay a dividend of 8 per cent. out of their clear profits, but three-fourths of the remainder were to go as a tribute to the public.

By way of repayment of the military expenses incurred by the State on their behalf, the Company were required to pay two lacs of rupees annually for each regiment of 1,000 men sent to India at the Company's desire. The Act further authorized the Company to enlist soldiers[1] and punish deserters, and prohibited British subjects from residing more than ten miles from any of the Company's principal settlements without a special licence.

Parliamentary inquiries of 1781.

Two Parliamentary committees on Indian affairs were appointed in the year 1781. The object of the first, of which Burke was the most prominent member, was to consider the administration of justice in India. Its firstfruits were the passing of the Act, to which reference has been made above for further defining the powers of the supreme court. But it continued to sit for many years and presented several reports, some written by Burke himself. The other committee, which sat in secret, and of which Dundas was chairman, was instructed to inquire into the cause of the recent war in the Carnatic and the state of the British government on the coast. This committee did not publish its report until 1782, by which time Lord North's Government had been driven out of office by the disastrous results of the American war and had been succeeded by the second Rockingham ministry. The reports of both committees were highly adverse to the system of administration in India, and to the persons responsible for that administration, and led to the passing of resolutions by the House of Commons requiring the recall of Hastings and Impey, and declaring that the powers given

[1] This was the first Act giving Parliamentary sanction to the raising of European troops by the Company. Clode, *Military Forces of the Crown*, i. 269.

by the Act of 1773 to the governor-general and council ought to be more distinctly ascertained. But the Court of Proprietors of the Company persisted in retaining Hastings in office in defiance both of their directors and of the House of Commons, and no steps were taken for further legislation until after the famous coalition ministry of Fox and North had come into office. Soon after this event, Dundas, who was now in opposition, introduced a Bill which empowered the king to recall the principal servants of the Company, and invested the Governor-General of Bengal with power which was little short of absolute. But a measure introduced by a member of the opposition had no chance of passing, and the Government were compelled to take up the question themselves

Fox's East India Bill.

It was under these circumstances that Fox introduced his famous East India Bill of 1783. His measure would have completely altered the constitution of the East India Company. It was clear that the existing distribution of powers between the State, the Court of Directors, and the Court of Proprietors at home, and the Company's servants abroad, was wholly unsatisfactory, and led to anarchy and confusion. Dundas had proposed to alter it by making the governor-general practically independent, and vesting him with absolute power. Fox adopted the opposite course of increasing the control of the State over the Company at home and its officers abroad. His Bill proposed to substitute for the existing Courts of Directors and Proprietors a new body, consisting of seven commissioners, who were to be named in the Act, were during four years to be irremovable, except upon an address from either House of Parliament, and were to have an absolute power of placing or displacing all persons in the service of the Company, and of ordering and administering the territories, revenues, and commerce of India. Any vacancy in the body was to be filled by the king. A second or subordinate body, consisting of nine assistant directors chosen by the legislature from among the largest proprietors, was to be formed for the

purpose of managing the details of commerce. For the first five years they were given the same security of tenure as the seven commissioners, but vacancies in their body were to be filled by the Court of Proprietors.

The events which followed the introduction of Fox's East India Bill belong rather to English than to Indian constitutional history. Everybody is supposed to know how the Bill was denounced by Pitt and Thurlow as a monstrous device for vesting the whole government and patronage of India in Fox and his Whig satellites; how, after having been carried through the House of Commons by triumphant majorities, it was defeated in the House of Lords through the direct intervention of the king; how George III contumeliously drove Fox and North out of office after the defeat of their measure; how Pitt, at the age of twenty-five, ventured to assume office with a small minority at his back; and how his courage, skill, and determination, and the blunders of his opponents, converted that minority into a majority at the general election of 1784.

Pitt's Act of 1784.

Like other ministers, Pitt found himself compelled to introduce and defend when in office measures which he had denounced when in opposition. The chief ground of attack on Fox's Bill was its wholesale transfer of patronage from the Company to nominees of the Crown. Pitt steered clear of this rock of offence. He also avoided the appearance of radically altering the constitution of the Company. But his measure was based on the same substantial principle as that of his predecessor and rival, the principle of placing the Company in direct and permanent subordination to a body representing the British Government.

The Act of 1784[1] begins by establishing a board of six commissioners, who were formally styled the 'Commissioners for the Affairs of India' but were popularly known as the

[1] 24 Geo. III, sess. 2, c. 25. Almost the whole of this Act has been repealed, but many of its provisions were re enacted in the subsequent Acts of 1793, 1813, and 1833.

Board of Control. They were to consist of the Chancellor of the Exchequer and one of the secretaries of state for the time being, and of four other Privy Councillors, appointed by the king, and holding office during pleasure. There was to be a quorum of three, and the president was to have a casting vote. They were unpaid, and had no patronage, but were empowered 'to superintend, direct, and control all acts, operations, and concerns which in anywise relate to the civil or military government or revenues of the British territorial possessions in the East Indies.' They were to have access to all papers and instruments of the Company, and to be furnished with such extracts or copies as they might require. The directors were required to deliver to the Board of Control copies of all minutes, orders, and other proceedings of the Company, and of all dispatches sent or received by the directors or any of their committees, and to pay due obedience to, and be bound by, all orders and directions of the Board, touching the civil or military government and revenues of India. The Board might approve, disapprove, or modify the dispatches proposed to be sent by the directors, might require the directors to send out the dispatches as modified, and in case of neglect or delay, might require their own orders to be sent out without waiting for the concurrence of the directors.

A committee of secrecy, consisting of not more than three members, was to be formed out of the directors, and, when the Board of Control issued orders requiring secrecy, the committee of secrecy was to transmit these orders to India, without informing the other directors.[1]

The Court of Proprietors lost its chief governing faculty, for it was deprived of the power of revoking or modifying any proceeding of the Court of Directors which had received the approval of the Board of Control.[2]

[1] See Digest, s. 14.

[2] s. 29. The Court of Proprietors had recently overruled the resolution of the Court of Directors for the recall of Warren Hastings.

These provisions related to the Government of India at home. Modifications were also made in the governing bodies of the different presidencies in India.

The number of members of the governor-general's council was reduced to three, of whom the commander-in-chief of the Company's forces in India was to be one and to have precedence next to the governor-general.

The Government of each of the Presidencies of Madras and Bombay was to consist of a governor and three counsellors, of whom the commander-in-chief in the presidency was to be one, unless the commander-in-chief of the Company's forces in India happened to be in the presidency, in which case he was to take the place of the local commander-in-chief. The governor-general or governor was to have a casting vote.

The governor-general, governors, commander-in-chief, and members of council were to be appointed by the Court of Directors. They, and any other person holding office under the Company in India, might be removed from office either by the Crown or by the directors. Only covenanted servants of the Company were to be qualified to be members of council. Power was given to make provisional and temporary appointments. Resignation of the office of governor-general, governor, commander-in-chief, or member of council was not to be valid unless signified in writing.[1]

The control of the governor-general and council over the government of the minor presidencies was enlarged, and was declared to extend to 'all such points as relate to any transactions with the country powers, or to war or peace, or to the application of the revenues or forces of such presidencies in time of war.'

A similar control over the military and political operations of the governor-general and council was reserved to the Court of Directors. 'Whereas to pursue schemes of conquest and extension of dominion in India are measures repugnant to

[1] s. 28. See Digest, s. 82. This was probably enacted in consequence of the circumstances attending Hastings's resignation of office.

the wish, the honour, and policy of this nation,' the governor-general and his council were not, without the express authority of the Court of Directors, or of the secret committee, to declare war, or commence hostilities, or enter into any treaty for making war, against any of the country princes or States in India, or any treaty for guaranteeing the possession of any country prince or State, except where hostilities had actually been commenced, or preparations actually made for the commencement of hostilities, against the British nation in India, or against some of the princes of States who were dependent thereon, or whose territories were guaranteed by any existing treaty.[1]

The provisions of the Act of 1773 for the punishment of offences committed by British subjects in India were repeated and strengthened. Thus the receipt of presents by persons in the employment of the Company or the Crown was to be deemed extortion, and punishable as such, and there was an extraordinary provision requiring the servants of the Company, under heavy penalties, to declare truly on oath the amount of property they had brought from India.

All British subjects were declared to be amenable to all courts of competent jurisdiction in India or in England for acts done in Native States, as if the act had been done in British territory.[2] The Company were not to release or compound any sentence or judgement of a competent court against any of their servants, or to restore any such servant to office after he had been dismissed in pursuance of a judicial sentence. The governor-general was empowered to issue his warrant for taking into custody any person suspected of carrying on illicit correspondence with any native prince or other person having authority in India.[3]

[1] s. 34. This enactment with its recital was substantially reproduced by a section of the Act of 1793 (33 Geo. III, c. 52, s. 42) which still remains unrepealed. See Digest, s. 48.

[2] s. 44. Re-enacted by 33 Geo. III, c. 52, s. 67. See Digest, s. 119.

[3] s. 53. This section was re-enacted in substance by 33 Geo. III, c. 52, ss. 45, 46. See Digest, s. 120.

A special court, consisting of three judges, four peers, and six members of the House of Commons, was constituted for the trial in England of offences committed in India.[1]

The Company were required to take into consideration their civil and military establishments in India, and to give orders 'for every practicable retrenchment and reduction,' and numerous internal regulations, several of which had been proposed by Fox, were made for Indian administration. Thus, promotion was to be as a rule by seniority, writers and cadets were to be between the ages of fifteen and twenty-two when sent out, and servants of the Company who had been five years in England were not to be capable of appointment to an Indian post, unless they could show that their residence in England was due to ill health.

The double government established by Pitt's Act of 1784, with its cumbrous and dilatory procedure and its elaborate system of checks and counter-checks, though modified in details, remained substantially in force until 1858. In practice the power vested in the Board of Control was exercised by the senior commissioner, other than the Chancellor of the Exchequer or Secretary of State. He became known as the President of the Board of Control, and occupied a position in the Government of the day corresponding to some extent to that of the modern Secretary of State for India. But the Board of Directors, though placed in complete subordination to the Board of Control, retained their rights of patronage and their powers of revision, and were thus left no unsubstantial share in the home direction of Indian affairs.[2]

[1] ss. 66-80. The elaborate enactments constituting the court and regulating its procedure were amended by an Act of 1786 (26 Geo. III, c. 57), and still remain on the Statute Book, but appear never to have been put in force. 'In 149 B.C., on the proposal of Lucius Calpurnius Piso, a standing Senatorial Commission (*quaestio ordinaria*) was instituted to try in judicial form the complaints of the provincials regarding the extortions of their Roman magistrates.' Mommsen, 3, 73.

[2] As to the practical working of the system at the close of the eighteenth century see Kaye's *Administration of the East India Company*, p. 129.

The first important amendments of Pitt's Act were made in 1786. In that year Lord Cornwallis[1] was appointed governor-general, and he made it a condition of his accepting office that his powers should be enlarged. Accordingly an Act was passed which empowered the governor-general in special cases to override the majority of his council and act on his own responsibility,[2] and enabled the offices of governor-general and commander-in-chief to be united in the same person.[3]

By another Act of the same session the provision requiring the approbation of the king for the choice of governor-general was repealed. But as the Crown still retained the power of recall this repeal was not of much practical importance.[4]

A third Act[5] repealed the provisions requiring servants of the Company to disclose the amount of property brought home by them, and amended the constitution and procedure of the special court under the Act of 1784. It also declared (s. 29) that the criminal jurisdiction of the supreme court at Calcutta was to extend to all criminal offences committed in any part of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, within the limits of the Company's trade, and (s. 30) that the governor or president and council of Fort St. George, in their courts of oyer and terminer and jail delivery, and the mayor's court at Madras should have civil and criminal jurisdiction over all British subjects residing in the territories of the Company on the coast of Coromandel, or in any other part of the Carnatic,

[1] 'The first of the new dynasty of Parliamentary Governors-General.' Lyall, *British Dominion in India*, p. 218.

[2] See Digest, s. 44.

[3] 26 Geo. III, c. 16. Lord Cornwallis, though holding the double office of governor-general and commander-in-chief, still found his powers insufficient, and was obliged to obtain in 1791 a special Act (31 Geo. III, c. 40) confirming his orders and enlarging his powers. The exceptional powers given to the governor-general by the Act of 1786 were reproduced in the Act of 1793 (33 Geo. III, c. 52, ss. 47–51), by sections which are still nominally in force but have been practically superseded by a later enactment of 1870 (33 Vict. c. 3, s. 5). See Digest, s. 44.

[4] 26 Geo. III, c. 25.

[5] 26 Geo. III, c. 57.

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or in the Northern Circars, or within the territories of the Soubah of the Deccan, the Nabob of Arcot, or the Rajah of Tanjore.

Legislation of 1788.

In 1788 a serious difference arose between the Board of Control and the Board of Directors as to the limits of their respective powers. The Board of Control, notwithstanding the objections of the directors, ordered out four royal regiments to India, and charged their expenses to Indian revenues. They maintained that they had this power under the Act of 1784. The directors on the other hand argued that under provisions of the Act of 1781, which were still unrepealed, the Company could not be compelled to bear the expenses of any troops except those sent out on their own requisition. Pitt proposed to settle the difference in favour of the Board of Control by means of an explanatory or declaratory Act. The discussions which took place on this measure raised constitutional questions which have been revived in later times.[1]

It was objected that troops raised by the Company in India would suffice and could be much more cheaply maintained. It was also argued on constitutional grounds that no troops ought to belong to the king for which Parliament did not annually vote the money.

In answer to the first objection Pitt confessed that, in his opinion, the army in India ought to be all on one establishment, and should all belong to the king, and declared that it was mainly in preparation for this reform that the troops were to be conveyed.[2]

With respect to the second objection he argued that the Bill of Rights and the Mutiny Act, which were the only positive enactments on the subject, were so vague and indefinite

[1] See the discussion in 1878 as to the employment of Indian troops in Malta, Hansard, ccxl. 14, and Anson, *Law and Custom of the Constitution*, vol. ii. pt. ii. p. 174 (3rd ed.).

[2] Lord Cornwallis was at this time considering a scheme for the combination of the king's and Company's forces. See *Cornwallis Correspondence*, i. 251, 341; ii. 316, 572.

as to be almost nugatory, and professed his willingness to receive any suggestions made for checking an abuse of the powers proposed to be conferred by the Bill.

The questions were eventually settled by a compromise. The Board of Control obtained the powers for which they asked, but a limit was imposed on the number of troops which might be charged to Indian revenues. At the same time the Board of Control were prevented from increasing any salary or awarding any gratuity without the concurrence of the directors and of Parliament, and the directors were required to lay annually before Parliament an account of the Company's receipts and disbursements.[1]

Charter Act of 1793.

In 1793, towards the close of Lord Cornwallis's governor-generalship, it became necessary to take steps for renewal of the Company's charter. Pitt was then at the height of his power; his most trusted friend, Dundas,[2] was President of the Board of Control; the war with France, which had just been declared, monopolized English attention; and Indian finances were, or might plausibly be represented as being, in a tolerably satisfactory condition. Accordingly the Act of 1793,[3] which was introduced by Dundas, passed without serious opposition, and introduced no important alterations. It was a measure of consolidation, repealing several *previous enactments, and runs to an enormous* length, but the amendments made by it relate to matters of minor importance.

The two junior members of the Board of Control were no longer required to be Privy Councillors. Provision was made for payment of the members and staff of the Board out of Indian revenues.

The commander-in-chief was not to be a member of the council at Fort William unless specially appointed by the

[1] 28 Geo. III, c. 8; Clode, *Military Forces of the Crown*, i. 270.

[2] Henry Dundas, who afterwards became the first Viscount Melville. He did not become president till June 22, 1793, but had long been the most powerful member of the Board.

[3] 33 Geo. III, c. 52.

Court of Directors. Departure from India with intent to return to Europe was declared to vacate the office of governor general, commander-in-chief, and certain other high offices. The procedure in the councils of the three presidencies was regulated, the powers of control exercisable by the governor-general were emphasized and explained, and the power of the governor-general to overrule the majority of his council was repeated and extended to the Governors of Madras and Bombay. The governor-general, whilst visiting another presidency, was to supersede the governor, and might appoint a vice-president to act for him in his absence. A series of elaborate provisions continued the exclusive privileges of trade for a further term of twenty years, subject to modifications of detail. Another equally elaborate set of sections regulated the application of the Company's finances. Power was given to raise the dividend to 10 per cent , and provision was made for payment to the Exchequer of an annual sum of £500,000 out of the surplus revenue which might remain after meeting the necessary expenses, paying the interest on, and providing for reduction of capital of, the Company's debt, and payment of dividend. It is needless to say that this surplus was never realized. The mutual claims of the Company and the Crown in respect of military expenses were adjusted by wiping out all debts on either side up to the end of 1792, and providing that thenceforward the Company should defray the actual expenses incurred for the support and maintenance of the king's troops serving in India. Some supplementary provisions regulated matters of civil administration in India. The admiralty jurisdiction of the supreme court of Calcutta was expressly declared to extend to the high seas. Power was given to appoint covenanted servants of the Company or other British inhabitants to be justices of the peace in Bengal. Power was also given to appoint scavengers for the presidency towns, and to levy what would now be called a sanitary rate. And the sale of spirituous liquors was made subject to the grant of a licence.

A few parliamentary enactments of constitutional importance were passed during the interval between the Charter Acts of 1793 and 1813.

Legislation between 1793 and 1813.

The lending of money by European adventurers to native princes on exorbitant terms had long produced grave scandals, such as those which were associated with the name of Paul Benham, and were exposed by Burke in his speech on the Nabob of Arcot's debts. An Act of 1797[1] laid down an important provision (s. 28) which is still in force, and which prohibits, under heavy penalties, unauthorized loans by British subjects to native princes.

The same Act reduced the number of judges of the supreme court at Calcutta to three, a chief justice and two puisnes, and authorized the grant of charters for the constitution of a recorder's court instead of the mayor's court at Madras and Bombay. It reserved native laws and customs in terms similar to those contained in the Act of 1781. It also embodied an important provision giving an additional and express sanction to the exercise of a local power of legislation in the Presidency of Bengal. One of Lord Cornwallis's regulations of 1793 (Reg. 41) had provided for forming into a regular code all regulations that might be enacted for the internal government of the British territories of Bengal. The Act of 1797 (s. 8) recognized and confirmed this 'wise and salutary provision,' and directed that all regulations which should be issued and framed by the Governor-General in Council at Fort William in Bengal, affecting the rights, persons, or property of the natives, or of any other individuals who might be amenable to the provincial courts of justice, should be registered in the judicial department, and formed into a regular code and printed, with translations in the country languages, and that all the grounds of each regulation should be prefixed to it. The provincial courts of judicature were directed to be bound by these regulations, and copies of the regulations of each year were

[1] 37 Geo. III, c. 142. See Digest, s. 118.

to be sent to the Court of Directors and to the Board of Control.[1]

An Act of 1799[2] gave the Company further powers for raising European troops and maintaining discipline among them. Under this Act the Crown took the enlistment of men for serving in India into its own hands, and, on petition from the Company, transferred recruits to them at an agreed sum per head for the cost of recruiting. Authority was given to the Company to train and exercise recruits, not exceeding 2,000, and to appoint officers for that purpose (bearing also His Majesty's commission) at pay not exceeding the sums stated in the Act. The number which the Crown could hold for transfer to the Company was limited to 3,000 men, or such a number as the Mutiny Act for the time being should specify. All the men raised were liable to the Mutiny Act until embarked for India.

An Act of 1800[3] provided for the constitution of a supreme court at Madras, and extended the jurisdiction of the supreme court at Calcutta over the district of Benares (which had been ceded in 1775) and all other districts which had been or might thereafter be annexed to the Presidency of Bengal.

An Act of 1807[4] gave the governors and councils at Madras and Bombay the same powers of making regulations, subject to approval and registration by the supreme court and recorder's court, as had been previously vested in the Government of Bengal, and the same power of appointing justices of the peace.

The legislation of 1813 was of a very different character from that of 1793. It was preceded by the most searching investigation which had yet taken place into Indian affairs. The vigorous policy of annexation carried on by Lord

[1] See Harington's *Analysis*, 1-9.

[2] 39 & 40 Geo. III, c. 109. See Clode, *Military Forces of the Crown*, i. 289.

[3] 39 & 40 Geo. III, c. 79. The charter under this Act was granted in December, 1801. Bombay did not acquire a supreme court until 1823 (3 Geo. IV, c. 71).

[4] 47 Geo. III, sess. 2, c. 68.

Wellesley during his seven years' tenure of office (1798–1805) had again involved the Company in financial difficulties, and in 1808 a committee of the House of Commons was appointed to inquire, amongst other things, into the conditions on which relief should be granted. It continued its sittings over the four following years, and the famous Fifth Report, which was published in July, 1812, is still a standard authority on Indian land tenures, and the best authority on the judicial and police arrangements of the time. When the time arrived for taking steps to renew the Company's charter, a Dundas [1] was still at the Board of Control, but it was no longer found possible to avoid the questions which had been successfully shirked in 1793. Napoleon had closed the European ports, and British traders imperatively demanded admission to the ports of Asia. At the end of 1811 Lord Melville told the Court of Directors that His Majesty's ministers could not recommend to Parliament the continuance of the existing system unless they were prepared to agree that the ships, as well as goods, of private merchants should be admitted into the trade with India under such restrictions as might be deemed reasonable.

The Company struggled hard for their privileges. They began by arguing that their political authority and commercial privileges were inseparable, that their trade profits were dependent upon their monopoly, and that if their trade profits were taken away their revenues would not enable them to carry on the government of the country. But their accounts had been kept in such a fashion as to leave it very doubtful whether their trade profits, as distinguished from their territorial revenues, amounted to anything at all. And this ground of argument was finally cut from under their feet by the concession of a continued monopoly of the tea trade, from which it was admitted that the commercial profits of the Company were principally, if not wholly, derived.

Driven from this position the Company dwelt on the

[1] Robert Dundas, who, on his father's death in 1811, became the second Viscount Melville.

political dangers which would arise from an unlimited resort of Europeans to India. The venerable Warren Hastings was called from his retreat to support on this point the views of the Company before the House of Commons, and it was on this occasion that the members testified their respect for him by rising as a body on his entrance into the House and standing until he had assumed his seat near the bar. His evidence confirmed the assertions of the Company as to the danger of unrestricted European immigration into India, and was supplemented by evidence to a similar effect from Lord Teignmouth (Sir J. Shore), Colonel (Sir John) Malcolm, and Colonel (Sir Thomas) Munro. Experience had proved, they affirmed, that it was difficult to impress even upon the servants of the Company, whilst in their noviciate, a due regard for the feelings and habits of the people, and Englishmen of classes less under the observation of the supreme authorities were notorious for the contempt with which, in their natural arrogance and ignorance, they contemplated the usages and institutions of the natives, and for their frequent disregard of the dictates of humanity and justice in their dealings with the people of India. The natives, although timid and feeble in some places, were not without strength and resolution in others, and instances had occurred where their resentment had proved formidable to their oppressors. It was difficult, if not impossible, to afford them protection, for the Englishman was amenable only to the courts of British law established at the presidencies, and although the local magistrate had the power of sending him further for trial, yet to impose upon the native complainant and witness the obligation of repairing many hundred miles to obtain redress was to subject them to delay, fatigue, and expense, which would be more intolerable than the injury they had suffered.

That their apprehensions were unfounded no one who is acquainted with the history or present conditions of British India would venture to deny. But they were expressed by

the advocates of the Company in language of unjustifiable intemperance and exaggeration. Thus Mr. Charles Grant, in the course of the debate in the House of Commons, dwelt on the danger of letting loose among the people of India a host of desperate needy adventurers, whose atrocious conduct in America and in Africa afforded sufficient indication of the evil they would inflict upon India.

The controversy was eventually compromised by allowing Europeans to resort to India, but only under a strict system of licences.

Closely connected with the question of the admission of independent Europeans into India was that of missionary enterprise. The Government were willing to take steps for the recognition and encouragement of Christianity by the appointment of a bishop and archdeacons. But a large number of excellent men, belonging mainly to the Evangelical party, and led in the House of Commons by Wilberforce, were anxious to go much further in the direction of committing the Indian Government to the active propagation of Christianity among the natives of India. On the other hand, the past and present servants of the Company, including even those who, like Lord Teignmouth, were personally in sympathy with the Evangelical school, were fully sensitive to the danger of interfering with the religious convictions or alarming the religious prejudices of the natives.

The proposals ultimately submitted by the Government to Parliament in 1813 were embodied in thirteen resolutions.[1]

The first affirmed the expediency of extending the Company's privileges, subject to modifications, for a further term of twenty years.

The second preserved to the Company the monopoly of the China trade and of the trade in tea.

The third threw open to all British subjects the export and import trade with India, subject to the exception of tea, and to certain safeguards as to warehousing and the like.

[1] Printed in an appendix to vol. vii. of Mill and Wilson's *British India*.

The fourth and fifth regulated the application of the Company's territorial revenues and commercial profits.

The sixth provided for the reduction of the Company's debt, for the payment of a dividend at the rate of 10½ per cent. per annum, and for the division of any surplus between the Company and the public in the proportion of one-sixth to the former and five-sixths to the latter.

The seventh required the Company to keep their accounts in such manner as to distinguish clearly those relating to the territorial and political departments from those relating to the commercial branch of their affairs.

The eighth affirmed the expediency, in the interests of economy, of limiting the grants of salaries and pensions.

The ninth reserved to the Court of Directors the right of appointment to the offices of governor-general, governor, and commander-in-chief, subject to the approbation of the Crown.

Under the tenth, the number of the king's troops in India was to be limited, and any number exceeding the limit was, unless employed at the express requisition of the Company, to be at the public charge. This modified, in a sense favourable to the Company, Pitt's declaratory Act of 1788.

Then followed a resolution that it was expedient that the Church establishment in the British territories in the East Indies should be placed under the superintendence of a bishop and three archdeacons, and that adequate provision should be made from the territorial revenues of India for their maintenance.

The twelfth resolution declared that the regulations to be framed by the Court of Directors for the colleges at Haileybury and Addiscombe ought to be subject to the regulation of the Board of Control, and that the Board ought to have power to send instructions to India about the colleges at Calcutta [1] and Madras.

[1] The college at Calcutta had been founded by Lord Wellesley for the training of the Company's civil servants.

It was round the thirteenth resolution that the main controversy raged, and its vague and guarded language shows the difficulty that was experienced in settling its terms. The resolution declared 'that it is the duty of this country to promote the interest and happiness of the native inhabitants of the British dominions in India, and that such measures ought to be adopted as may tend to the introduction amongst them of useful knowledge, and of religious and moral improvement. That in the furtherance of the above objects, sufficient facilities shall be afforded by law to persons desirous of going to and remaining in India for the purpose of accomplishing these benevolent designs, provided always, that the authority of the local Governments, respecting the intercourse of Europeans with the interior of the country, be preserved, and that the principles of the British Government, on which the natives of India have hitherto relied for the free exercise of their religion, be inviolably maintained.' One discerns the planter following in the wake of the missionary, each watched with a jealous eye by the Company's servants.

The principles embodied in the Resolutions of 1813 were developed in the Act of the same year.[1] The language of the preamble to the Act is significant. It recites the expediency of continuing to the Company for a further term the possession of the territorial acquisitions in India, and the revenues thereof, 'without prejudice to the undoubted sovereignty of the Crown of the United Kingdom of Great Britain and Ireland in and over the same'.[2] The constitutional controversy of the preceding century was not to be reopened.

The Act then grants the Indian possessions and revenues to the Company for a further term of twenty years, reserves to them for the same time the China trade and the tea trade, but throws open the general India trade, subject to various restrictive conditions.

[1] 55 Geo. III, c 155.

[2] The sovereignty of the Crown had been clearly reserved in the charter of 1698. But at that time the territorial possessions were insignificant.

The thirty-third section recites the thirteenth resolution, and the expediency of making provision for granting permission to persons desirous of going to and remaining in India, for the purposes mentioned in the resolution (missionaries) 'and for other lawful purposes' (traders), and then enables the Court of Directors or, on their refusal, the Board of Control, to grant licences and certificates entitling the applicants to proceed to any of the principal settlements of the Company and to remain in India as long as they conduct themselves properly, but subject to such restrictions as may for the time being be judged necessary. Unlicensed persons are to be liable to the penalties imposed by earlier Acts on interlopers, and to punishment on summary conviction in India. British subjects allowed to reside more than ten miles from a presidency town are to procure and register certificates from a direct court.

A group of sections relates to the provision for religion, learning, and education, and the training of the Company's civil and military servants. There is to be a Bishop of Calcutta, with three archdeacons under him. The colleges at Calcutta and elsewhere are placed under the regulations of the Board of Control. One lac of rupees in each year is to be 'set apart and applied to the revival and improvement of literature and the encouragement of the learned natives of India, and for the introduction and promotion of a knowledge *of the sciences among the inhabitants of the British territories* in India.' The college at Haileybury and the military seminary at Addiscombe[1] are to be maintained, and no person is to be appointed writer unless he has resided four terms at Haileybury, and produces a certificate that he has conformed to the regulations of the college.

Then come provisions for the application of the revenues,[2]

[1] The names of these places are not mentioned.

[2] An interesting discussion of these provisions is to be found in the correspondence of 1833 between Mr. Charles Grant and the Court of Directors. According to Mr. Grant the principle established by the Acts of 1793 and 1813 was that the profit accruing from the Company's commerce should, in the first instance, be employed in securing the regular payment of divi-

for keeping the commercial and territorial accounts distinct, and for increasing and further defining the powers of superintendence and direction exercised by the Board of Control.

The patronage of the Company is preserved, subject to the approval of the Crown in the case of the higher offices, and of the Board of Control in certain other cases.

The number of king's troops to be paid for out of the Company's revenues is not to exceed 20,000, except in case of special requisition. In order to remove doubts it is expressly declared that the Government in India may make laws, regulations, and articles of war for their native troops, and provide for the holding of courts-martial.

The local Governments are also empowered to impose taxes on persons subject to the jurisdiction of the supreme court, and to punish for non-payment.

Justices of the peace are to have jurisdiction in cases of assault or trespass committed by British subjects on natives of India, and also in cases of small debts due to natives from British subjects. Special provision is made for the exercise of jurisdiction in criminal cases over British subjects residing more than ten miles from a presidency town; and British subjects residing or trading, or occupying immovable property, more than ten miles from a presidency town are to be subject to the jurisdiction of the local civil courts.

And, finally, special penalties are enacted for theft, forgery, perjury, and coinage offences, the existing provisions of the common or statute law being apparently considered insufficient for dealing adequately with these offences.

Legislation between 1813 and 1833.

The imperial legislation for India during the interval between 1813 and 1833 does not present many features of importance.

An Act of 1814[1] removed doubts as to the powers of the Indian Government to levy duties of customs and other taxes.

dends to the proprietors of stock, and should then be applied for the benefit of the territory. The last-mentioned applications to be suspended only so long as the burden of debt on the territory continued below a certain specified amount.

[1] 54 Geo. III, c. 105.

An Act of 1815[1] gave power to extend the limits of the presidency towns, and amended some of the minor provisions of the Act of 1813.

An Act of 1818[2] removed doubts as to the validity of certain Indian marriages, a subject which has always presented much difficulty, but which has now been dealt with by Indian legislation.[3]

An Act of 1820[4] enabled the East India Company to raise and maintain a corps of volunteer infantry.

An Act of 1823[5] charged the revenues of India with the payment of additional sums for the pay and pensions of troops serving in India, and regulated the pensions of Indian bishops and archdeacons, and the salaries and pensions of the judges of the supreme courts.

The same Act authorized the grant of a charter for a supreme court of Bombay in substitution for the recorder's court.

The prohibition on settling in India without a licence was still retained. But restrictions on Indian trade were gradually removed, and a consolidating Act of 1823[6] expressly declared that trade might be carried on in British vessels with all places within the limits of the Company's charter except China.

Another Act of 1823[7] consolidated and amended the laws for punishing mutiny and desertion of officers and soldiers in the Company's service.

An Act of 1824[8] transferred the island of Singapore to the East India Company.

Acts of 1825[9] and 1826[10] further regulated the salaries of Indian judges and bishops, and regulated the appointment of juries in the presidency towns.

[1] 55 Geo. III, c. 84. [2] 58 Geo. III, c. 84.
[3] See Acts III & XV of 1872. [4] 1 Geo. IV, c. 99.
[5] 4 Geo. IV, c. 71. [6] 4 Geo. IV, c. 80. [7] 4 Geo. IV, c. 81.
[8] 5 Geo. IV, c. 108. Singapore was placed under the Colonial Office by the Straits Settlements Act, 1866 (29 & 30 Vict. c. 115, s. 1).
[9] 6 Geo. IV, c. 85 [10] 7 Geo. IV, c. 37.

An Act of 1828[1] declared the real estates of British subjects dying within the jurisdiction of the supreme courts at the presidency towns to be liable for payment of their debts. Other Acts of the same year applied the East India Mutiny Act to the force known as the Bombay Marine,[2] and extended to the East Indies sundry amendments of the English criminal law.[3]

And an Act of 1832[4] authorized the appointment of persons other than covenanted civilians to be justices of the peace in India, and repealed the provisions requiring jurors to be Christians.

Charter Act of 1833.

When the time came round again for renewing the Company's charter, Lord William Bentinck's peaceful *régime* had lasted for five years in India; the Reform Act had just been carried in England, and Whig principles were in the ascendant. Bentham's views on legislation and codification were exercising much influence on the minds of law reformers. Macaulay was in Parliament, and was secretary to the Board of Control, and James Mill, Bentham's disciple, was the examiner of India correspondence at the India House. The Charter Act of 1833,[5] like that of 1813, was preceded by careful inquiries into the administration of India. It introduced important changes into the constitution of the East India Company and the system of Indian administration.

The territorial possessions of the Company were allowed to remain under their government for another term of twenty years; but were to be held by the Company 'in trust for His Majesty, his heirs and successors, for the service of the Government of India.'

The Company's monopoly of the China trade, and of the tea trade, was finally taken away.

[1] 9 Geo. IV, c. 33.
[2] 9 Geo. IV, c. 72.
[3] 9 Geo. IV, c. 74.
[4] 2 & 3 Will. IV, c. 117.
[5] 3 & 4 Will. IV, c. 85. The Act received the Royal Assent on August 28, 1833, but did not come into operation, except as to appointments and the like, until April 22, 1834 (s. 117).

The Company were required to close their commercial business and to wind up their affairs with all convenient speed. Their territorial and other debts were charged on the revenues of India, and they were to receive out of those revenues an annual dividend at the rate of £10 10*s.* per cent. on the whole amount of their capital stock (i.e. £630,000 a year), but this dividend was to be subject to redemption by Parliament on payment of £200 sterling for every £100 stock and for the purpose of this redemption a sum of two million pounds was to be paid by the Company to the National Debt Commissioners and accumulated with compound interest until it reached the sum of twelve millions.[1]

The Company, while deprived of their commercial functions retained their administrative and political powers, under the system of double government instituted by previous Acts, and, in particular, continued to exercise their rights of patronage over Indian appointments. The constitution of the Board of Control was modified, but as the powers of the Board were executed by its president the modifications had no practical effect. The Act re-enacted provisions of former Acts as to the 'secret committee' of the Court of Directors, and the dispatches to be sent through that committee, and it simplified the formal title of the Company by authorizing it to be called the East India Company.

No very material alteration was made in the system on which the executive government was to be carried on in India.

The superintendence, direction, and control of the whole civil and military government were expressly vested in a governor-general and counsellors, who were to be styled 'the Governor-General of India in Council.'[2] This council was increased by the addition of a fourth ordinary member.

[1] As to the financial arrangements made under these provisions, see the evidence of Mr. Melvill before the Lords Committee of 1852.

[2] It will be remembered that the Governor-General had been previously the Governor-General of Bengal in Council.

who was not to be one of the Company's servants, and was not to be entitled to act as member of council except for legislative purposes.[1] It need hardly be stated that the fourth member was Macaulay.

The overgrown Presidency of Bengal[2] was to be divided into two distinct presidencies, to be called the Presidency of Fort William and the Presidency of Agra. But this provision never came into operation. It was suspended by an enactment of 1835 (5 & 6 Will. IV, c. 52), and the suspension was continued indefinitely by the Charter Act of 1853 (16 & 17 Vict. c. 95, s. 15).

The intention was that each of the four presidencies, Fort William, Fort St. George, Bombay, and Agra, should have, for executive purposes, a governor and council of its own. But the governor-general and his council were to be, for the present, the governor and council of Fort William, and power was given to reduce the members of the council, or even suspend them altogether and vest the executive control in a governor alone.[3]

Important alterations were made by the Act of 1833 in the legislative powers of the Indian Government. 'At that date there were five different bodies of statute law in force in the (Indian) empire. First, there was the whole body of statute law existing so far as it was applicable, which was introduced by the Charter of George I and which applied,

[1] 'The duty of the fourth ordinary member' (under the Act of 1833) 'was confined entirely to the subject of legislation; he had no power to sit or vote except at meetings for the purpose of making laws and regulations; and it was only by courtesy, and not by right, that he was allowed to see the papers or correspondence, or to be made acquainted with the deliberations of Government upon any subject not immediately connected with legislation.' Minute by Sir Barnes Peacock of November 3, 1859.

[2] It had been increased by the addition of Benares in 1775, of the modern Orissa in 1803, of large territories in the North-West in 1801–3, and of Assam, Arakan, and Tenasserim in 1824.

[3] The power of reduction was exercised in 1833 by reducing the number of ordinary members of the Madras and Bombay councils from three to two (Political Dispatch of December 27, 1833). The original intention was to abolish the councils of the minor presidencies, but, at the instance of the Court of Directors, their retention was left optional.

at least, in the presidency towns. Secondly, all English Acts subsequent to that date, which were expressly extended to any part of India. Thirdly, the regulations of the governor-general's council, which commence with the Revised Code of 1793, containing forty-eight regulations, all passed on the same day (which embraced the results of twelve years' antecedent legislation), and were continued down to the year 1834. They only had force in the territories of Bengal. Fourthly, the regulations of the Madras council, which spread over the period of thirty-two years, from 1802 to 1834, and are [were] in force in the Presidency of Fort St. George. Fifthly, the regulations of the Bombay Code, which began with the revised code of Mr. Mountstuart Elphinstone in 1827, comprising the results of twenty-eight years' previous legislation, and were also continued into 1834, having force and validity in the Presidency of Fort St. David.'[1]

'In 1833,' says Mr. Cowell in continuation, 'the attention of Parliament was directed to three leading vices in the process of Indian government. The first was in the nature of the laws and regulations; the second was in the ill-defined authority and power from which these various laws and regulations emanated; and the third was the anomalous and sometimes conflicting judicatures by which the laws were administered.'

The Act of 1833 vested the legislative power of the Indian Government exclusively in the Governor-General in Council who had been, as has been seen, reinforced by the addition of a fourth legislative member. The four Presidential Governments were merely authorized to submit to the Governor-General in Council 'drafts or projects of any laws or regulations which they might think expedient,' and the Governor-General in Council was required to take these drafts and projects into consideration and to communicate his resolutions thereon to the Government proposing them.

[1] Cowell, *Tagore Lectures* of 1872. For 'Fort St. David' read 'Bombay.' See also Harington's *Analysis of the Bengal Regulations.*

The Governor-General in Council was expressly empowered to make laws and regulations—

(*a*) for repealing, amending, or altering any laws or regulations whatever, for the time being in force in the Indian territories;

(*b*) for all persons, whether British or native, foreigners or others, and for all courts of justice, whether established by charter or otherwise, and the jurisdiction thereof;

(*c*) for all places and things whatsoever within and throughout the whole and every part of the said territories.

(*d*) for all servants of the Company within the dominions of princes and States in alliance with the Company; and

(*e*) as articles of war for the government of the native officers and soldiers in the military service of the Company, and for the administration of justice by courts-martial to be holden on such officers and soldiers.

But this power was not to extend to the making of any laws and regulations—

(i) which should repeal, vary, or suspend any of the provisions of the Act of 1833, or of the Acts for punishing mutiny and desertion of officers and soldiers in the service of the Crown or of the Company; or

(ii) which should affect any prerogative of the Crown, or the authority of Parliament, or the constitution or rights of the Company, or any part of the unwritten laws or constitutions of the United Kingdom, whereon may depend the allegiance of any person to the Crown, or the sovereignty or dominion of the Crown over the Indian territories; or

(iii) without the previous sanction of the Court of Directors, which should empower any court other than a chartered court to sentence to death any of His Majesty's natural-born subjects born in Europe, or their children, or abolish any of the chartered courts.[1]

[1] See Digest, s. 62.

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There was also an express saving of the right of Parliament to legislate for India and to repeal Indian Acts, and, the better to enable Parliament to exercise this power, all Indian laws were to be laid before Parliament.

Laws made under the powers given by the Act were to be subject to disallowance by the Court of Directors, acting under the Board of Control, but, when made, were to have effect as Acts of Parliament, and were not to require registration or publication in any court of justice.

The laws made under the Act of 1833 were known as Acts, and took the place of the 'regulations' made under previous Acts of Parliament.

A comprehensive consolidation and codification of Indian laws was contemplated. Section 53 of the Act recited that it was 'expedient that, subject to such special arrangements as local circumstances may require, a general system of judicial establishments and police, to which all persons whatsoever, as well Europeans as natives, may be subject, should be established in the said territories at an early period; and that such laws as may be applicable in common to all classes of the inhabitants of the said territories, due regard being had to the rights, feelings, and peculiar usages of the people, should be enacted; and that all laws and customs having the force of law within the same territories should be ascertained and consolidated, and, as occasion may require, amended.'

The Act then went on to direct the Governor-General in Council to issue a commission, to be known as the 'Indian Law Commission,' which was to inquire into the jurisdiction, powers, and rules of the existing courts of justice and police establishments in the Indian territories, and all existing forms of judicial procedure, and into the nature and operation of all laws, whether civil or criminal, written or customary, prevailing and in force in any part of the Indian territories, to which any inhabitants of those territories were then sub-

ject. The commissioners were to report to the Governor-General in Council, setting forth the results of their inquiries, and suggesting alterations, and these reports were to be laid before Parliament.

This was the first Indian Law Commission, of which Macaulay was the most prominent member.[1] Its labours resulted directly in the preparation of the Indian Penal Code, which, however, did not become law until 1860, and, indirectly and after a long interval of time, in the preparation of the Codes of Civil and Criminal Procedure and other codes of substantive and adjective law which now form part of the Indian Statute Book.

Important provisions were made by the Act of 1833 for enlarging the rights of European settlers, and for protecting the natives of the country, and ameliorating their condition.

It was declared to be lawful for any natural-born subject of His Majesty to proceed by sea to any port or place having a custom-house establishment within the Indian territories, and to reside thereat, or to proceed to and reside in or pass through any part of the territories which were under the Company's government on January 1, 1800, or any part of the countries ceded by the Nabob of the Carnatic, of the province of Cuttack, or of the settlements of Singapore and Malacca. These rights might be exercised without the requirement of any licence. But every subject of His Majesty not being a native was, on his arrival in India from abroad, to signify on entry, to an officer of customs, his name, place of destination, and objects of pursuit in India. A licence was still required for residence in any part of India other than those above mentioned, but power was reserved to the Governor-General in Council, with the previous approbation

[1] His colleagues were another English barrister, Mr. Cameron, afterwards law member of council, and two civil servants of the Company, Mr. Macleod of the Madras Service, and Mr. (afterwards Sir William) Anderson of the Bombay Service. Sir William Macnaghten of the Bengal Service was also appointed, but did not accept the appointment.

of the Court of Directors, to declare any such part open, and remove the obligation of a licence.

Another section expressly enabled any natural-born subject of the Crown to acquire and hold lands in India.

The regulations as to licences have long since been abolished or fallen into desuetude. But by s. 84 of the Act of 1833 the Governor-General in Council was required, as soon as conveniently might be, to make laws or regulations providing for the prevention or punishment of the illicit entrance into or residence in British India of persons not authorized to enter or reside therein. Effect has been given to this requirement by Act III of 1864, under which the Government of India and local Governments can order foreigners to remove themselves from British India, and apprehend and detain them if they refuse to obey the order. Under the same Act the Governor-General in Council can apply to British India, or any part thereof, special provisions as to the reporting and licensing of foreigners.[1]

An echo of the fears expressed in 1813 as to the dangers likely to arise from the free settlement of interlopers is to be found in the section which, after reciting that 'the removal of restrictions on the intercourse of Europeans with the said territories will render it necessary to provide for any mischief or dangers that may arise therefrom,' requires the Governor-General in Council, by laws and regulations, to provide, with all convenient speed, for the protection of the natives of the said territories from insult and outrage in their persons, religions, and opinions.[2]

Section 87 of the Act declared that 'no native of the said territories, nor any natural-born subject of His Majesty resident therein, shall, by reason only of his religion, place

[1] See *Alter Caufman* v. *Government of Bombay*, [1894] I. L. R. 18 Bombay, 636. As to the general powers of excluding aliens from British territory, see *Musgrove* v. *Chun Teeong Toy*, [1891] L. R. A. C. 272 (exclusion of Chinese from Australia), and an article in the *Law Quarterly Review* for 1897 on 'Alien Legislation and the Prerogative of the Crown'.

[2] See ss. 295–8 of the Indian Penal Code.

of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the Company.' The policy of freely admitting natives of India to a share in the administration of the country has never been more broadly or emphatically enunciated.

And finally, the Governor-General in Council was required forthwith to take into consideration the means of mitigating the state of slavery, and of ameliorating the condition of slaves, and of extinguishing slavery throughout the Indian territories so soon as such extinction should be practicable and safe, and to prepare and submit to the Court of Directors drafts of laws on the subject.[1] In preparing these drafts due regard was to be had to the laws of marriage and the rights and authorities of fathers and heads of families.

The sections of the Act which follow these broad declarations of policy are concerned mainly with regulations relating to the ecclesiastical establishments in India and increasing the number of bishoprics to three, and with regulations for the college of Haileybury.

The Act of 1833, as sent out to India, was accompanied by an explanatory dispatch from the Court of Directors, which, according to a tradition in the India Office, was drafted by James Mill.[2]

Legislation between 1833 and 1853.

During the twenty years' interval between the Charter Act of 1833 and that of 1853 there was very little Parliamentary legislation on India.

An Act of 1835 (5 & 6 Will. IV, c. 52) suspended the provisions of the Act of 1833 as to the division of the Presidency of Bengal into two presidencies,[3] and authorized the appoint-

[1] See Act V of 1843 and ss. 370, 371 of the Indian Penal Code. See also Mr. Cameron's evidence before the Select Committee of the House of Lords in 1852, and Minutes by Sir H. S. Maine, No. 92.

[2] Kaye, *Administration of the East India Company*, p. 137.

[3] By s. 15 of the Charter Act of 1853 (16 & 17 Vict. c. 95) this suspension was continued until the Court of Directors and Board of Control should otherwise direct.

ment of a lieutenant-governor for the North-Western Provinces.[1] The project of establishing an executive council for the Bengal and North-Western Provinces was abandoned.

An Act of 1840 (3 & 4 Vict. c. 37) consolidated and amended the Indian Mutiny Acts, and empowered the Governor-General in Council to make regulations for the Indian Navy.

An Act of 1848 (11 & 12 Vict. c. 21) enacted for India a law of insolvency, which has been repealed and re-enacted for the presidency towns by Act III of 1909.

Charter Act of 1853.

In 1853, during the governor-generalship of Lord Dalhousie, it became necessary to take steps for renewing the term of twenty years which had been created by the Act of 1833, and accordingly the last of the Charter Acts (16 & 17 Vict. c. 95) was passed in that year.

It differed from the previous Charter Acts by not fixing any definite term for the continuance of the powers, but simply providing that the Indian territories should remain under the government of the Company, in trust for the Crown, until Parliament should otherwise direct.

The Act reduced the number of the directors of the Company from twenty-four to eighteen, and provided that six of these should be appointed by the Crown.

It continued indefinitely, until the Court of Directors and Board of Control should otherwise direct, the suspension of the division of the Bengal Presidency contemplated by the Act of 1835, but authorized the appointment of a separate governor for that presidency, distinct from the governor-general.[2] However, the Act went on to provide that, unless and until this separate governor was appointed, the Court of Directors and Board of Control might authorize the appointment of a lieutenant-governor of Bengal. The power of

[1] The first appointment was made in 1836.

[2] Under the Act of 1833 the Governor-General of India was also Governor of Bengal, but during his frequent absences from Calcutta used to delegate his functions in the latter capacity to the senior member of his council. See the evidence of Sir Herbert Maddock and Mr. F. Millett before the Select Committee of the House of Lords in 1852.

appointing a separate governor was not brought into operation until the year 1912, but the power of appointing a lieutenant-governor was exercised in 1854, and continued until 1912.

By the following section, power was given to the directors either to constitute one new presidency, with the same system of a governor and council as in the Presidencies of Madras and Bombay, or, as an alternative, to authorize the appointment of a lieutenant-governor. The power to constitute a new presidency was not exercised, but a new lieutenant-governorship was created for the Punjab in 1859.

Further alterations were made by the Act of 1853 in the machinery for Indian legislation. The 'fourth' or legislative member of the governor-general's council was placed on the same footing with the older or 'ordinary' members of the council by being given a right to sit and vote at executive meetings. At the same time the council was enlarged for legislative purposes by the addition of legislative members, of whom two were the Chief Justice of Bengal and one other supreme court judge, and the others were Company's servants of ten years' standing appointed by the several local Governments. The result was that the council as constituted for legislative purposes under the Act of 1853 consisted of twelve [1] members, namely—

The governor-general.

The commander-in-chief.

The four ordinary members of the governor-general's council.

The Chief Justice of Bengal.

A puisne judge.

Four representative members (paid) [2] from Bengal, Madras, Bombay, and the North-Western Provinces.

[1] Power was given by the Act of 1853 to the governor-general to appoint, with the sanction of the Home Government, two other members from the civil service, but this power was never exercised.

[2] They received salaries of £5,000 a year each.

The sittings of the legislative council were made public and their proceedings were officially published.

The Indian Law Commission appointed under the Act of 1833 had ceased to exist before 1853. It seems to have lost much of its vitality after Macaulay's departure from India. It lingered on for many years, published periodically ponderous volumes of reports, on which, in many instances, Indian Acts have been based, but did not succeed in effecting any codification of the laws or customs of the country, and was finally allowed to expire.[1] Efforts were, however, made by the Act of 1853 to utilize its labours, and for this purpose power was given to appoint a body of English commissioners, with instructions to examine and consider the recommendations of the Indian Commission.[2]

And, finally, the right of patronage to Indian appointments was by the Act of 1853 taken away from the Court of Directors and directed to be exercised in accordance with regulations framed by the Board of Control. These regulations threw the covenanted civil service open to general competition.[3]

In 1855 an Act was passed (18 & 19 Vict. c. 53) which prohibited the admission of further students to Haileybury College after January 25, 1856, and directed the college to be closed on January 31, 1858.

[1] As to the proceedings of the Commission, see the evidence given in 1852 before the Select Committee of the House of Lords on the East India Company's charter by Mr. F. Millett and Mr. Hay Cameron. Mr. Millett was the first secretary, and was afterwards member of the Commission. Mr. Cameron was one of the first members of the Commission, and was afterwards legislative member of the governor-general's council.

[2] The commissioners appointed under this power were Sir John (afterwards Lord) Romilly, Sir John Jervis (Chief Justice of Common Pleas), Sir Edward Ryan, C. H. Cameron, J. N. Macleod, J. A. F. Hawkins, Thomas Flower Ellis, and Robert Lowe (Lord Sherbrooke). They were instructed by the Board of Control to consider specially the preparation of a simple and uniform code of procedure for Indian courts, and the amalgamation of the supreme and sadr courts. (Letter of November 30, 1853, from the Board of Control to the Indian Law Commission.)

[3] They were prepared in 1854 by a committee under the presidency of Lord Macaulay.

In 1854 was passed an Act[1] which has had important administrative results in India. Under the old system the only mode of providing for the government of newly acquired territory was by annexing it to one of the three presidencies. Under this system of annexations the Presidency of Bengal had grown to unwieldy dimensions. Some provision had been made for the relief of its government by the constitution of a separate lieutenant-governorship for the North-Western Provinces in 1836. The Act of 1853 had provided for the constitution of a second lieutenant-governorship, and, if necessary, of a fourth presidency. These powers were, however, not found sufficient, and it was necessary to provide for the administration of territories which it might not be advisable to include in any presidency or lieutenant-governorship.[2]

Establishment of chief commissionerships.

This provision was made by the Act of 1854, which empowered the Governor-General of India in Council, with the sanction of the Court of Directors and the Board of Control, to take by proclamation under his immediate authority and management any part of the territories for the time being in the possession or under the government of the East India Company, and thereupon to give all necessary orders and directions respecting the administration of that part, or otherwise provide for its administration.[3] The mode in which this power has been practically exercised has been by the appointment of chief commissioners, to whom the Governor-General in Council delegates such powers as need not be reserved to the Central Government. In this way chief commissionerships were established for Assam,[4] the Central Provinces, Burma,[4] and other parts of India. But the title of chief commissioner was not directly recognized by Act of Parliament,[5] and the territories under the administration of chief commissioners are technically 'under the immediate authority

[1] 17 & 18 Vict. c. 77.

[2] See preamble to Act of 1854.

[3] See Digest, s. 56.

[4] The chief commissionership of Assam was abolished in 1908, but restored in 1912. Burma was placed under a lieutenant-governor in 1897.

[5] It has since been recognized by the Act of 1870 (33 Vict. c 3), ss. 1, 3.

and management' of the Governor-General in Council within the meaning of the Act of 1854.

The same Act empowered the Government of India, with the sanction of the Home authorities, to define the limits of the several provinces in India; expressly vested in the Governor-General in Council all the residuary authority not transferred to the local Governments of the provinces into which the old Presidency of Bengal had been divided; and directed that the governor-general was no longer to bear the title of governor of that presidency.

The Government of India Act, 1858.

The Mutiny of 1857 gave the death-blow to the system of 'double government,' with its division of powers and responsibilities. In February, 1858, Lord Palmerston introduced a Bill for transferring the government of India to the Crown. Under his scheme the home administration was to be conducted by a president with the assistance of a council of eight persons. The members of the council were to be nominated by the Crown, were to be qualified either by having been directors of the Company or by service or residence in India, and were to hold office for eight years, two retiring by rotation in each year. In other respects the scheme did not differ materially from that eventually adopted. The cause of the East India Company was pleaded by John Stuart Mill in a weighty State paper, but the second reading of the Bill was carried by a large majority.

Shortly afterwards, however, Lord Palmerston was turned out of office on the Conspiracy to Murder Bill, and was succeeded by Lord Derby, with Mr. Disraeli as Chancellor of the Exchequer and Lord Ellenborough as *President* of the Board of Control. The Chancellor of the Exchequer promptly introduced a new Bill for the government of India, of which the most remarkable feature was a council consisting partly of nominees of the Crown and partly of persons elected on a complicated and elaborate system, by citizens of Manchester and other large towns, holders of East India stock, and others. This scheme died of ridicule, and when the House assembled

after the Easter recess no one could be found to defend it.[1] Mr. Disraeli grasped eagerly at a suggestion by Lord John Russell that the Bill should be laid aside, to be succeeded by another based on resolutions of the House. In the meantime Lord Ellenborough had been compelled to resign in consequence of disapproval of his dispatch censuring Lord Canning's Oudh proclamation, and had been succeeded by Lord Stanley, on whom devolved the charge of introducing and piloting through the House the measure which eventually became law as the Act for the better government of India.[2]

This Act declared that India was to be governed directly by and in the name of the Crown, acting through a Secretary of State, to whom were to be transferred the powers formerly exercised either by the Court of Directors or by the Board of Control. Power was given to appoint a fifth principal Secretary of State for this purpose.

The Secretary of State was to be aided by a council of fifteen members, of whom eight were to be appointed by the Crown and seven elected by the directors of the East India Company. The major part both of the appointed and of the elected members were to be persons who had served or resided in India for ten years, and, with certain exceptions, who had not left India more than ten years before their appointment. Future appointments or elections were to be so made that nine at least of the members of the council should hold these qualifications. The power of filling vacancies was vested in the Crown as to Crown appointments, and in the council itself as to others. The members of the council were to hold office during good behaviour, but to be removable on an address by both Houses of Parliament, and were not to be capable of sitting or voting in Parliament.[3]

[1] It was to this Bill that Lord Palmerston applied the Spanish boy's remark about Don Quixote, and said that whenever a man was to be seen laughing in the streets he was sure to have been discussing the Government of India Bill.

[2] 21 & 22 Vict. c. 108.

[3] These provisions have been modified by subsequent legislation. See Digest, s. 4.

The council was charged with the duty of conducting, under the direction of the Secretary of State, the business transacted in the United Kingdom in relation to the government of India and the correspondence with India. The Secretary of State was to be the president of the council, with power to overrule in case of difference of opinion, and to send, without reference to the council, any dispatches which might under the former practice have been sent through the secret committee.[1]

The officers on the home establishment both of the Company and of the Board of Control were to form the establishment of the new Secretary of State in Council, and a scheme for a permanent establishment was to be submitted.

The patronage of the more important appointments in India was vested either in the Crown or in the Secretary of State in Council. Lieutenant-governors were to be appointed by the governor-general subject to the approval of the Crown.

As under the Act of 1853, admission to the covenanted civil service was to be open to all natural-born subjects of Her Majesty, and was to be granted in accordance with the results of an examination held under rules to be made by the Secretary of State in Council with the assistance of the Civil Service Commissioners.

The patronage to military cadetships was to be divided between the Secretary of State and his council.

The property of the Company was transferred to the Crown. The expenditure of the revenues of India was to be under the control of the Secretary of State in Council, but was to be charged with a dividend on the Company's stock and with their debts, and the Indian revenues remitted to Great Britain were to be paid to the Secretary of State in Council and applied for Indian purposes. Provision was made for the appointment of a special auditor of the accounts of the Secretary of State in Council.[2]

[1] Digest, ss. 6–14. [2] Ibid. 22, 30.

The Board of Control was formally abolished. With respect to contracts and legal proceedings, the Secretary of State in Council was given a quasi-corporate character for the purpose of enabling him to assert the rights and discharge the liabilities devolving upon him as successor to the East India Company.[1]

The Indian Army.

It has been seen that under the authority given by various Acts the Company raised and maintained separate military forces of their own. The troops belonging to these forces, whilst in India, were governed by a separate Mutiny Act, perpetual in duration, though re-enacted from time to time with amendments.[2] The Company also had a small naval force, once known as the Bombay Marine, but after 1829 as the Indian Navy.

The Act of 1858 transferred to the service of the Crown all the naval and military forces of the Company, retaining, however, their separate local character, with the same liability to local service and the same pay and privileges as if they were in the service of the Company. Many of the European troops refused to acknowledge the authority of Parliament to make this transfer. They demanded re-engagement and bounty as a condition of the transfer of their services,[3] and, failing to get these terms, were offered their discharge.

In 1860 the existence of European troops as a separate force was put an end to by an Act (23 & 24 Vict. c. 100) which, after reciting that it is not expedient that a separate European force should be continued for the local service of Her Majesty in India, formally repealed the enactments by which the Secretary of State in Council was authorized to give directions for raising such forces.

In 1861 the officers and soldiers formerly belonging to the

[1] Digest, s. 35.

[2] The first of these Acts was an Act of 1753 (27 Geo. II, c. 9), and the last was an Act of 1857 (20 & 21 Vict. c. 66), which was repealed in 1863 (26 & 27 Vict. c. 48).

[3] In 1859 they made a 'demonstration' which, from the small stature of the recruits enlisted during the Indian Mutiny, was sometimes called the 'Dumpy Mutiny.' Pritchard, *Administration of India*, i. 36.

Company's European forces were invited to join, and many of them were transferred to, the regular army under the authority of an Act of that year (24 & 25 Vict. c. 74). Thus the European army of the late East India Company, except a small residue, became merged in the military forces of the Crown.[1]

The naval force of the East India Company was not amalgamated with the Royal Navy, but came to an end in 1863, when it was decided that the defence of India against serious attack by sea should be undertaken by the Royal Navy, which was also to provide for the performance of the duties in the Persian Gulf which had been previously undertaken by the Indian Navy.[2]

The change effected by the Government of India Act, 1858, was formally announced in India by the Queen's Proclamation of November 1, 1858.

In 1859 the Government of India Act, 1859 (22 & 23 Vict. c. 41), was passed for determining the officers by whom, and the mode in which, contracts on behalf of the Secretary of State in Council were to be executed in India.[3]

Legislation of 1861.

Three Acts of great importance were passed in the year 1861.

Indian Civil Service Act, 1861.

Under the Charter Act of 1793 rank and promotion in the Company's civil service were strictly regulated by seniority, and all offices in the 'civil line' of the Company's service in India under the degree of councillor were strictly reserved to the civil servants of the presidency in which the office was held. But by reason of the exigencies of the public service, numerous civil appointments had been made in

[1] Under existing arrangements all the troops sent to India are placed on the Indian establishment, and from that time cease to be voted on the Army Estimates. The number of the forces in the regular army as fixed by the annual Army Act is declared to be 'exclusive of the number actually serving within Her Majesty's Indian possessions.' As to the constitutionality of employing Indian troops outside India, see above p. 68, note 1.

[2] See Sir Charles Wood's letter to the Admiralty of Oct. 20, 1862.

[3] See Digest, s. 33.

India in disregard of these restrictions. The Indian Civil Service Act, 1861 (24 & 25 Vict. c. 54), validated all those irregular appointments in the past, but scheduled a number of appointments which, in the future, were to be reserved to members of the covenanted civil service.[1]

At the same time it abolished the rule as to seniority and removed all statutory restrictions on appointments to offices not in the schedule. And, even with respect to the reserved offices, it left a power of appointing outsiders under exceptional circumstances. This power can only be exercised where it appears to the authority making the appointment that, under the circumstances of the case, it ought to be made without regard to statutory conditions. The person appointed must have resided for at least seven years in India. If the post is in the Revenue or Judicial Departments, the person appointed must pass the same examinations and tests as are required in the case of the covenanted civil service. The appointment is provisional only, and must be forthwith reported to the Secretary of State in Council with the special reasons for making it, and unless approved within twelve months by the Secretary of State it becomes void.[2]

Indian Councils Act, 1861.

The Indian Councils Act, 1861 (24 & 25 Vict. c. 67), modified the constitution of the governor-general's executive council and remodelled the Indian legislatures.

A fifth ordinary member was added to the governor-general's council. Of the five ordinary members, three were required to have served for ten years in India under the Company or the Crown, and one was to be a barrister or advocate of five years' standing. Power was retained to appoint the commander-in-chief an extraordinary member.[3]

Power was given to the governor-general, in case of his absence from headquarters, to appoint a president of the council, with all the powers of the governor-general except those with respect to legislation. And, in such case, the

[1] This schedule is still in force. Digest, s. 93.

[2] This provision still exists. Ibid. s. 95.

[3] Ibid. 39, 40.

governor-general might invest himself with all the powers exercisable by the Governor-General in Council, except the powers with respect to legislation.[1]

For purposes of legislation the governor-general's council was reinforced by additional members, not less than six nor more than twelve in number, nominated by the governor-general and holding office for two years. Of these additional members, not less than one-half were to be non-official, that is to say, persons not in the civil or military service of the Crown.[2] The lieutenant-governor of a province was also to be an additional member whenever the council held a legislative sitting within his province.

The Legislative Council established under the Act of 1853 had modelled its procedure on that of Parliament, and had shown what was considered an inconvenient degree of independence by asking questions as to, and discussing the propriety of, measures of the Executive Government.[3] The functions of the new Legislative Council were limited strictly to legislation, and it was expressly forbidden to transact any business except the consideration and enactment of legislative measures, or to entertain any motion except a motion for leave to introduce a Bill, or having reference to a Bill actually introduced.[4]

Measures relating to the public revenue or debt, religion, military or naval matters, or foreign relations, were not to be introduced without the governor-general's sanction. The assent of the governor-general was required to every Act passed by the council, and any such Act might be

[1] See Digest, ss. 45, 47.

[2] These provisions have been modified by subsequent legislation. See Digest, s. 60.

[3] It had, among other things, discussed the propriety of the grant to the Mysore princes. See Proceedings of Legislative Council for 1860, pp. 1343-1402.

[4] 24 & 25 Vict. c. 67, s. 19. As to the object with which this section was framed, see paragraph 24 of Sir Charles Wood's dispatch of August 9, 1861. The restrictions imposed in 1861 were relaxed in 1892 (55 & 56 Vict. c. 14, s. 2), and have been further relaxed since. Digest, s. 64.

disallowed by the Queen, acting through the Secretary of State.

The legislative power of the Governor-General in Council was declared to extend to making laws and regulations for repealing, amending, or altering any laws or regulations for the time being in force in the 'Indian territories now under the dominion of Her Majesty,'[1] and to making laws and regulations for all persons, whether British or native, foreigners or others, and for all courts of justice, and for all places and things within the said territories, and for all servants of the Government of India within the dominions of princes and States in alliance with Her Majesty.[2] But there were express savings for certain Parliamentary enactments, for the general authority of Parliament, and for any part of the unwritten laws or constitution of the United Kingdom whereon the allegiance of the subject or the sovereignty of the Crown may depend.

An exceptional power was given to the governor-general, in cases of emergency, to make, without his council, ordinances, which were not to remain in force for more than six months.[3]

Doubts had for some time existed as to the proper mode of legislating for newly acquired territories of the Company. When Benares and the territories afterwards known as the North-Western Provinces were annexed, the course adopted was to extend to them, with some variations, the laws and regulations in force in the older provinces of Bengal, Bihar, and Orissa. But when the Saugor and Nerbudda territories were acquired from the Marathas by Lord Hastings, and when Assam, Arakan, and Tenasserim were conquered in 1824, and Pegu in 1852, these regions were specially exempted from the Bengal Regulations, instructions, however, being given to the officers administering them to conduct their procedure in accordance with the spirit of the regulations, so

[1] Explained by 55 & 56 Vict. c. 14, s. 3. Digest, s. 63.

[2] These powers were extended by 28 & 29 Vict. c. 17, s. 1, and 32 & 33 Vict. c. 98, s. 1. See Digest, s. 63.

[3] See Digest, s. 69.

far as they were suitable to the circumstances of the country.[1] And when the Punjab was annexed the view taken was that the Governor-General in Council had power to make laws for the new territory, not in accordance with the forms prescribed by the Charter Acts for legislation, but by executive orders, corresponding to the Orders in Council made by the Crown for what are called Crown Colonies. Provinces in which this power was exercised were called 'non-regulation provinces' to distinguish them from the 'regulation provinces,' which were governed by regulations formally made under the Charter Acts. A large body of laws had been passed under this power or assumed power, and in order to remove any doubts as to their validity a section was introduced into the Indian Councils Act, 1861, declaring that no rule, law, or regulation made before the passing of the Act by the governor-general or certain other authorities should be deemed invalid by reason of not having been made in conformity with the provisions of the Charter Acts.[2]

The power of legislation which had been taken away from the Governments of Madras and Bombay by the Charter Act of 1833 was restored to them by the Act of 1861. The councils of the governors of Madras and Bombay were expanded for legislative purposes by the addition of the advocate-general and of other members nominated on the same principles as the additional members of the governor-general's council.[3] No line of demarcation was drawn between the subjects reserved for the central and the local legislatures respectively; but the previous sanction of the governor-general was made requisite for legislation by the local legislature in certain

[1] Chesney's *Indian Polity* (3rd ed.), pp. 58, 64.

[2] Indian legislation subsequently became necessary for the purpose of ascertaining and determining the rules which had been thus validated in general terms. See Sir James Stephen's speech in the Legislative Council in the debate on the Punjab Laws Acts, March 26, 1872, and the chapter contributed by him to Sir W. Hunter's *Life of Lord Mayo*, vol. ii pp. 214–221.

[3] These provisions have also been modified by subsequent legislation. See Digest, ss. 71, 76, 77.

cases, and all Acts of the local legislature required the subsequent assent of the governor-general in addition to that of the Governor, and were made subject to disallowance by the Crown, as in the case of Acts of the governor-general's council. There were also the same restrictions on the proceedings of the local legislatures.[1]

The governor-general was directed to establish, by proclamation, a legislative council for Bengal,[2] and was empowered to establish similar councils for the North-Western Provinces and for the Punjab.[3] These councils were to consist of the lieutenant-governor and of a certain number of nominated councillors, and were to be subject to the same provisions as the local legislatures for Madras and Bombay.

The Act also gave power to constitute new provinces for legislative purposes and appoint new lieutenant-governors, and to alter the boundaries of existing provinces.[4]

Indian High Courts Act, 1861

The amalgamation of the supreme and sadr courts, that is to say, of the courts representing the Crown and the Company respectively at the presidency towns, had long been in contemplation, and was carried into effect by the Indian High Courts Act, 1861.[5]

By this Act the Queen was empowered to establish, by letters patent,[6] high courts of judicature in Calcutta, Madras, and Bombay, and on their establishment the old chartered supreme courts and the old 'Sadr Adalat' Courts were to be abolished, the jurisdiction and the powers of the abolished courts being transferred to the new high courts.

Each of the high courts was to consist of a chief justice and not more than fifteen judges, of whom not less than

[1] See note 4, p. 100.

[2] A legislative council for Bengal was established by a proclamation of January 18, 1862.

[3] A legislative council was established for the North-Western Provinces and Oudh (now United Provinces of Agra and Oudh) in 1886, and for the Punjab in 1897.

[4] ss. 46, 47. Digest, s. 74. [5] 24 & 25 Vict. c. 104.

[6] The letters patent or charters now in force with respect to these three high courts bear date December 28, 1865.

one-third, including the chief justice, were to be barristers, and not less than one-third were to be members of the covenanted civil service. All the judges were to be appointed by and to hold office during the pleasure of the Crown. The high courts were expressly given superintendence over, and power to frame rules of practice for, all the courts subject to their appellate jurisdiction.[1]

Power was given by the Act to establish another high court, with the same constitution and powers as the high courts established at the presidency towns.[2]

Legislation since 1861.

The Indian High Courts Act of 1861 closed the series of constitutional statutes consequent on the transfer of the government of India to the Crown. Such Acts of Parliament as have since then been passed for India have done little more than amend, with reference to minor points, the Acts of 1858 and 1861.

The Indian High Courts Act, 1865,[3] empowered the Governor-General in Council to pass orders altering the limits of the jurisdiction of the several chartered high courts and enabling them to exercise their jurisdiction over native Christian subjects of Her Majesty resident in Native States.

Another Act of the same year, the Government of India Act, 1865,[4] extended the legislative powers of the governor-general's council to all British subjects in Native States, whether servants of the Crown or not,[5] and enabled the Governor-General in Council to define and alter, by proclamation, the territorial limits of the various presidencies and lieutenant-governorships.[6]

The Government of India Act, 1869,[7] vested in the Secretary of State the right of filling all vacancies in the Council of India, and changed the tenure of members of the council

[1] See Digest, ss. 96–103.

[2] s. 16. Under this power a high court was established at Allahabad in 1866. It is probable that the power was thereby exhausted.

[3] 28 & 29 Vict. c. 15. Digest, s. 104.

[4] 28 & 29 Vict. c. 17.

[5] See Digest, s. 63.

[6] Ibid. 57.

[7] 32 & 33 Vict. c. 97.

from a tenure during good behaviour to a term of ten years. It also transferred to the Crown from the Secretary of State in Council the right of filling vacancies in the offices of the members of the councils in India.

The Indian Councils Act, 1869,[1] still further extended the legislative powers of the governor-general's council by enabling it to make laws for all native Indian subjects of Her Majesty in any part of the world, whether in India or not.

A very important modification in the machinery for Indian legislation was made by the Government of India Act, 1870.[2] It has been seen that for a long time the governor-general believed himself to have the power of legislating by executive order for the non-regulation provinces. The Indian Councils Act of 1861, whilst validating rules made under this power in the past, took away the power for the future. The Act of 1870 practically restored this power by enabling the governor-general to legislate in a summary manner for the less advanced parts of India.[3] The machinery provided is as follows. The Secretary of State in Council, by resolution, declares the provisions of section 1 of the Act of 1870 applicable to some particular part of a British Indian province. Thereupon the Governor in Council, lieutenant-governor, lieutenant-governor in Council, or chief commissioner of the province, may at any time propose to the Governor-General in Council drafts of regulations for the peace and good government of that part, and these drafts, when approved and assented to by the Governor-General in Council, and duly gazetted, have the same force of law as if they had been formally passed at sittings of the Legislative Council. This machinery has been extensively applied to the less advanced districts of the different Indian provinces, and numerous regulations have been, and are constantly being, made under it.

[1] 32 & 33 Vict. c. 98. See Digest, s. 63.

[2] 33 & 34 Vict. c. 3. Digest, s. 68.

[3] This restoration of a power of summary legislation was strongly advocated by Sir H. S. Maine. See Minutes by Sir H. S. Maine, pp. 153, 156.

The same Act of 1870 contained two other provisions of considerable importance. One of them (s. 5) repeated and strengthened the power of the governor-general to overrule his council.[1] The other (s. 6), after reciting the expediency of giving additional facilities for the employment of natives of India 'of proved merit and ability' in the civil service of Her Majesty in India, enabled any native of India to be appointed to any 'office, place, or employment' in that service, notwithstanding that he had not been admitted to that service in the manner directed by the Act of 1858, i.e. by competition in England. The conditions of such appointments were to be regulated by rules made by the Governor-General in Council, with the approval of the Secretary of State in Council.[2] The result of these rules was the 'statutory civilian,' who has now been merged in or superseded by the 'Provincial Service.'

Two small Acts were passed in 1871, the Indian Councils Act, 1871 (34 & 35 Vict. c. 34),[3] which made slight extensions of the powers of local legislatures, and the Indian Bishops Act, 1871 (34 & 35 Vict. c. 62), which regulated the leave of absence of Indian bishops.

An Act of 1873 (36 Vict. c. 17) formally dissolved the East India Company as from January 1, 1874.

The Indian Councils Act, 1874 (37 & 38 Vict. c. 91), enabled a sixth member of the governor-general's council to be appointed for public works purposes.

The Council of India Act, 1876 (39 & 40 Vict. c. 7), enabled the Secretary of State, for special reasons, to appoint any person having professional or other peculiar qualifications to be a member of the Council of India, with the old tenure, 'during good behaviour,' which had been abolished in 1869.[4]

[1] See Digest, s. 44. It will be remembered that Lord Lytton acted under this power when he exempted imported cotton goods from duty in 1879.

[2] See ibid. 94.

[3] This Act was passed in consequence of the decision of the Bombay High Court in *R.* v. *Reay*, 7 Bom. Cr. 6. See note on s. 79 of Digest.

[4] This power was exercised in the case of Sir H. S. Maine, and was probably conferred with special reference to him. It has since been repealed.

In the same year was passed the Royal Titles Act, 1876 (39 & 40 Vict. c. 10), which authorized the Queen to assume the title of Empress of India.

The Indian Salaries and Allowances Act, 1880 (43 & 44 Vict. c. 3), enabled the Secretary of State to regulate by order certain salaries and allowances which had been previously fixed by statute.[1]

The Indian Marine Service Act, 1884 (47 & 48 Vict. c. 38), enabled the Governor-General in Council to legislate for maintaining discipline in a small marine establishment, now called the Royal Indian Marine, the members of which were neither under the Naval Discipline Act nor under the Merchant Shipping Acts.[2]

The Council of India Reduction Act, 1889 (52 & 53 Vict. c. 65), authorized the Secretary of State to abstain from filling vacancies in the Council of India until the number should be reduced to ten.

The Indian Councils Act, 1892 (55 & 56 Vict. c. 14), authorized an increase in the number of the members of the Indian legislative councils, and empowered the Governor-General in Council, with the approval of the Secretary of State in Council, to make rules regulating the conditions under which these members are to be nominated.[3] At the same time the Act relaxed the restrictions imposed by *the Act of 1861 on the proceedings of the legislative* councils by enabling rules to be made authorizing the discussion of the annual financial statement, and the asking of questions, under prescribed conditions and restrictions.

The Act also cleared up a doubt as to the meaning of an enactment in the Indian Councils Act of 1861, modified some of the provisions of that Act about the office of 'additional members' of legislative councils, and enabled local legislatures, with the previous sanction of the governor-general, to repeal

[1] See Digest, ss. 80, 113. [2] See ibid. 63.
[3] See ibid. 60, 71, 73.

or alter Acts of the governor-general's council affecting their province.[1]

The Madras and Bombay Armies Act, 1893 (56 & 57 Vict. c. 62), abolished the offices of commanders-in-chief of the Madras and Bombay armies, and thus made possible a simplification of the Indian military system which had been asked for persistently by four successive viceroys.[2]

The Contracts (India Office) Act, 1903 (3 Edw. VII, c. 11) declared the mode in which certain contracts might be made by the Secretary of State in Council.[3]

The Indian Councils Act, 1904 (4 Edw. VII, c. 26), while continuing the power to appoint a sixth member of the Governor-General's Council, removed the necessity for appointing him specifically for public works purposes.[4]

The Council of India Act, 1907 (7 Edw. VII, c. 35), modified the constitution of the Council of India.

The Indian Councils Act, 1909 (9 Edw. VII, c. 4), the passage of which will always be associated with the name of Lord Morley of Blackburn, made important changes in the constitution and functions of the Indian legislative councils, and gave power to make changes in the executive governments of the Indian provinces.

The introduction of the measure was preceded by discussions and correspondence, which began in Lord Morley's first year of office as Secretary of State for India, and extended over a period of nearly three years.

In 1906 the Viceroy, Lord Minto, drew up a minute in which he reviewed the political situation in India, and pointed out how the growth of education, encouraged by British rule,

[1] See Digest, s. 76. In the absence of this power the sphere of action of the then new legislature for the North-Western Provinces and Oudh was confined within an infinitesimal area.

[2] Administrative reforms in India are not carried out with undue precipitancy. The appointment of a single commander-in-chief for India, with four subordinate commanders under him, was recommended by Lord William Bentinck, Sir Charles Metcalfe, and others in 1833. (Further Papers respecting the East India Company's Charter, 1833.)

[3] See Digest, s. 32.

[4] See Digest, s. 39.

had led to the rise of important classes claiming equality of citizenship, and aspiring to take a larger part in shaping the policy of the government. He then appointed a committee of his council to consider the group of questions arising out of these novel conditions. From the discussion thus commenced was developed a tentative project of reform, which was outlined in a Home Department letter to local governments dated August 24, 1907. This letter, after having received approval by the Secretary of State in Council, was laid before Parliament, and was published in England and India.[1] The local governments to whom it was addressed were instructed to consult important bodies and individuals representative of various classes of the community before submitting their own conclusions to the Government of India. The replies were received in due course, and are to be found in the 'colossal blue books' appended to a letter from the Government of India, dated October 1, 1908, in which the situation was again reviewed, and revised proposals were formulated. The views of the Secretary of State on these proposals were expressed in a dispatch dated November 27, 1908,[2] and were expounded by Lord Morley in a speech delivered in the House of Lords on December 17, 1908.

Reference was made to the subject in the King's speech which ushered in the session of 1909, and in the debates on the address in reply. The Bill embodying the proposals of the Government, so far as they required Parliamentary authority, was presented by Lord Morley on February 17, 1909, and was read a second time, after a debate of two days, on February 24. It passed through committee on March 4, and was considered on report, read a third time, and passed by the House of Lords on March 9. In the House of Commons the Bill was read a second time on April 1, was considered in

[1] East India (Advisory and Legislative Councils, &c.), 1907, Cd. 3710.

[2] The letter of October 1, 1908, and the dispatch of November 27, 1908, are to be found in vol. i of the Blue Book entitled East India (Advisory and Legislative Councils, &c.), 1908, Cd. 4425. The replies from the Local Governments are embodied in separate volumes.

committee on April 19, and on April 26 was considered on report, read a third time, and passed with amendments. The Commons' amendments were considered on May 4 and agreed to with an important modification which was accepted by the Commons. The Act thus passed received the Royal Assent on May 25, 1909.

The only important change in the Bill during its passage through Parliament related to the creation of executive councils for provinces under lieutenant governors. Clause 3 of the Bill as introduced enabled the Governor-General in Council, with the approval of the Secretary of State in Council, by proclamation, to create an executive council for any such province. This clause was struck out by the House of Lords, restored by the House of Commons, and eventually agreed to in the modified form in which it now stands as s. 3 of the Act.

In the course of the debates on the Bill much was said about Lord Morley's announcement of his intention to appoint a native of India to a post on the Governor-General's council. This subject was not strictly relevant to the Bill, because, as was explained, the power of making these appointments is free from any restriction as to race, creed, or place of birth. Effect was given to Lord Morley's intention by the appointment of Mr. Sinha, in March, 1909, to the post of law member of the Governor-General's council. This appointment carried a step further the policy adopted in 1907, when two natives of India were placed on the Secretary of State's council. In pursuance of the same policy natives of India have been placed on the executive councils for Bengal, Madras, and Bombay, and for Bihar and Orissa.

Under s. 1 of the Act the 'additional' members of the Indian legislative councils, i.e. those other than the members of the executive councils, must, instead of being all nominated, include elected members.

By s. 2 power was given to raise the number of members of

the executive councils for Madras and Bombay to a maximum of four, of whom two at least must be persons who at the time of their appointment have been in the service of the Crown in India for at least twelve years.

Under s. 3 there is power to constitute an executive council for any province having a lieutenant-governor. But, except in the case of Bengal,[1] the draft of any proclamation proposed to be made in pursuance of this power must be laid before each House of Parliament, and the proclamation may be disallowed in pursuance of an address from either House. The number of the executive council must not exceed four.

S. 4 requires the appointment of vice-presidents of the several councils.

By s. 5 the Governor-General in Council, the Governors in Council of Madras and Bombay, and the lieutenant-governors or lieutenant-governors in council of other provinces were required to make rules authorizing at any meeting of their respective legislative councils the discussion of the annual financial statement, and of any matter of general interest, and the asking of questions.

Under ss. 1 and 6 there is extensive power to make regulations for carrying the Act into effect.

And under s. 7 certain proclamations, regulations, and rules are required to be laid before Parliament when made.

It will be seen that the provisions of the Act of 1909 are, as is usual in Acts relating to India, couched in wide and general terms, leaving all details, and some important matters of principle, to be determined by regulations and rules made by the authorities in India.

The regulations and rules required to give effect in the first instance to the Act of 1909 are to be found in a Blue Book which was laid before Parliament in pursuance of s. 7 of the Act.[2]

[1] This exception was by the Act of 1912 (2 & 3 Geo. v. c. 6, 1, 2) extended to Bihar and Orissa, for which an executive council of three has been constituted. See below, p. 132.

[2] East India (Executive and Legislative Councils) Regulations, &c., for giving effect to the Indian Councils Act, 1909 (1910, Cd. 4987).

The Blue Book begins with a notification fixing November 15, 1909, as the date at which the provisions of the Act were to come into operation.

Then follow, under the headings Nos. II to IX, regulations and rules for the nomination and election of the members of the several legislative councils of India, other than those who are such members by virtue of being members of the executive councils. The regulations were, in the case of each council, of a general character, and related to such matters as number, qualifications, term of office, and mode of filling vacancies. The rules, which were scheduled to the regulations, were more detailed, and prescribed the mode in which the several elections were to be made. These regulations and rules are now superseded by revised regulations issued in 1912.[1]

In No. X are to be found important rules regulating the business of the Governor-General's legislative council, and relating to (1) the discussion of the annual financial statement, (2) the discussion of matters of general public interest, and (3) the asking of questions.[2]

No. XI is a Home Department resolution of the Government of India, dated November 15, 1909, which describes in general terms the nature of the changes made by the Act of 1909, and the regulations under it, and has appended to it a table showing the constitutions of the several legislative councils.[3]

The changes made in the legislative councils by the Act of 1909, and the regulations under it, as revised in 1912, may be considered under the heads of (*A*) Constitution and (*B*) Functions.[4]

[1] See below, p. 135. [2] See Appendix II.

[3] This table is now superseded by a new table showing the constitution of the councils under the regulations as revised in 1912. See Appendix I.

[4] For the sake of convenience the changes include the alterations made in pursuance of the territorial distributions consequent on the Coronation Durbar.

A. CONSTITUTION

The constitution of the councils is changed in three respects :

1. Numbers ;
2. Proportion of official and non-official members ;
3. Methods of appointment or election.

1. *Numbers.* The Indian Councils Act, 1892, increased the size of the legislative councils constituted under the Act of 1861. The maximum of additional members was raised from 12 to 16 in the Governor-General's council, and from 8 to 20 in the Madras and Bombay councils. The limit of number of the Bengal council was raised to 20, that of the United (then North-Western) Provinces to 15. The Punjab and Burma obtained legislative councils in 1897, and Eastern Bengal and Assam[1] in 1905, the maximum strength being fixed at 15 in the first two, and 20 in the third.

These numbers are now doubled or more than doubled. The additional members of the Governor-General's council are to be not more than 60, the additional members of the councils of Bengal, Madras, and Bombay, and the members of the councils of the United Provinces, and of Bihar and Orissa, are to be not more than 50. In the Punjab and Burma the maximum is raised to 30. In computing the number of members of the Governor-General's council, 8 must be added to the 'additional' members, namely, the 6 ordinary members of the executive council, the commander-in-chief, and the lieutenant-governor or chief commissioner of the province in which the council sits. Similarly there are now on the Madras and Bombay legislative councils 4 *ex officio* members, namely, in each case, the 3 members of the executive council and the advocate-general ; and on the legislative councils for Bengal and for Bihar and Orissa there are the 3 ordinary members of each of the new executive councils.

[1] Eastern Bengal is now merged in Bengal, and the provinces of Bihar and Orissa and of Assam have separate legislative councils.

Thus the actual strength of the legislative councils under the new law is as follows : [1]

Legislative Council of—	*Number under Regulations of* 1912.	*Maximum number under Act of* 1909.
India	68	68
Madras	48	54
Bombay	48	54
Bengal	53	53
United Provinces	49	50
Bihar and Orissa	44	53
Punjab	26	30
Burma	17	30
Assam	25	30

2. Proportion of official and non-official members.

Under the Act of 1861 at least one-half of the additional members of the legislative councils of the Governor-General and of the governors of Madras and Bombay, and at least one-third of the members of the other legislative councils, had to be non-official. An official majority was not required by statute, but in practice was always maintained before the Act of 1909, except in Bombay, where the official members had been for some years in a minority.

Under the regulations of 1909 and 1912 there must be an official majority in the Governor-General's legislative council, and a non-official majority in all the other legislative councils. The existing proportions, as fixed by the regulations, are as follows :

Legislative Council of—	*Officials.*	*Non-Officials.*	*Majority.*
India	36	32	*Official.* 4
Madras	20	26	*Non-official.* 6
Bombay	18	28	10
Bengal	19	32	13
United Provinces	20	27	7
Bihar and Orissa	18	25	7
Punjab	10	14	4
Burma	6	9	3
Assam	9	15	6

[1] Excluding in each case the head of the Government, i.e. the Governor-General, Governor, Lieutenant-Governor, or Chief Commissioner.

These figures exclude in each case the head of the government, i.e. the Governor-General, Governor, Lieutenant-Governor, or Chief Commissioner. They also leave out of account the two 'expert' members or, in the case of Bihar and Orissa and of Assam, the one expert member, who may be appointed from time to time as occasion requires, and who may be either official or non-official.[1] Any alteration in the number of the executive council would affect the proportions.

It will be observed that these proportions are fixed by the regulations, not by statute. They were so fixed in pursuance of the policy announced by the Secretary of State, who was of opinion that while it was necessary to maintain an official majority in the Governor-General's council, this was not necessary or desirable in the case of the other councils. Refusal by the provincial councils to pass necessary legislation may be met by exercise of the power vested in the Governor-General's Council to legislate for any part of India. Undesirable legislation may be checked by the power of veto reserved to the head of the government.

3. *Methods of appointment or election.*

Under the Act of 1861 the 'additional' members of the legislative councils were nominated by the Governor-General, governor, or lieutenant-governor, the only restriction on his discretion being the requirement to maintain a due proportion of unofficial members.

By the Act of 1892 the nominations were required to be in accordance with regulations made by the Governor-General in council and approved by the Secretary of State. Under the regulations so made a certain number of these nominations had to be made on the recommendation of specified persons, bodies, and associations, the intention being to give a representative character to the persons so nominated. There was no obligation to accept the recommendation, but in practice it

[1] There is no provision for the appointment of experts, as such, on the Governor-General's legislative council, but experts could be placed on the Council, when occasion requires, under his powers of nominating members

was never refused. In the case of other nominations regard was to be had to the due and fair representation of the different classes of the community. Under the Act of 1909 the additional members must include not only nominated members, but also members elected in accordance with regulations made under the Act, and the regulations of November, 1909, as amended in 1912, give effect to this requirement.

There is a separate set of regulations for every legislative council, and scheduled to each set are detailed rules as to the method of election.

The provisions of the regulations themselves are of a more general character, and those framed for the Governor-General's council may be treated as typical.

They begin by fixing the number of 'additional' members, classifying them as elected or nominated, describing in general terms the classes or bodies by whom the elected members are to be elected, and defining, by reference to the schedules, the constitution of the electorates and the method of election. The constitutions thus provided, both for the Governor-General's council and for the other legislative councils, will be found, in a tabular form, in an appendix to this book.[1]

The substitution of a system of election for a system of nomination obviously involves the imposition of certain disqualifications for election. These disqualifications are laid down for the Governor-General's council by Regulation IV, which provides that—

No person shall be eligible for election as a member of the council if such person

(*a*) is not a British subject; or

(*b*) is an official; or

(*c*) is a female; or

(*d*) has been adjudged by a competent civil court to be of unsound mind; or

(*e*) is under twenty-five years of age; or

[1] Appendix I.

(*f*) is an uncertificated bankrupt or an undischarged insolvent; or

(*g*) has been dismissed from the Government service; or

(*h*) has been sentenced by a criminal court to imprisonment for an offence punishable with imprisonment for a term exceeding six months, or to transportation, or has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed, or remitted, or the offender pardoned; or

(*i*) has been debarred from practising as a legal practitioner by order of any competent authority; or

(*k*) has been declared by the Governor-General in Council to be of such reputation and antecedents that his election would, in the opinion of the Governor-General in Council, be contrary to the public interest.

But in cases (*g*) (*h*) (*i*) and (*k*) the disqualification may be removed by an order of the Governor-General in Council in that behalf.

Identical provisions are embodied in all the other sets of regulations, except that the powers exercisable by the Governor-General in Council may be exercised by the local government.

The positive qualifications both of electors and of candidates are fixed by the scheduled rules, but by the regulations females, minors, and persons adjudged to be of unsound mind are disqualified for voting.

Every person elected or nominated must, before taking his seat, make an oath or affirmation of his allegiance to the Crown.

The ordinary term of office of an 'additional' member, whether nominated or elected, is three years. But official members and members nominated as being persons who have expert knowledge of subjects connected with proposed or pending legislation are to hold office for three years or such shorter period as the Governor-General may at the time of

nomination determine. A member elected or nominated to fill a casual vacancy sits only for the unexpired portion of his predecessor's term. The effect of these provisions, which are repeated in substance in all the sets of regulations, is that for elected members of the legislative councils there must be a general election every three years.

The regulations provide for declaring seats vacant, for choice or determination of seat in case of a candidate elected by more than one electorate, and for the case of failure to elect.

An election is declared to be invalid if any corrupt practice is committed in connexion therewith by the candidate elected, and provision is made for the determination of disputes as to the validity of elections.

The tables in Appendix I, and, still more, the elaborate rules scheduled to the regulations under the Act of 1909, show the number and diversity of the electorates to the legislative councils, and the variety of methods adopted for constituting the electorates, and for regulating their procedure in elections. The object aimed at was to obtain, so far as possible, a fair representation of the different classes and interests in the country, and the regulations and rules were framed for this purpose in accordance with local advice, and with reference to the local conditions of each province. The consequent variety of the rules makes it impossible to generalize their provisions or to summarize their contents. All of them may be regarded as experimental, some of them are avowedly temporary and provisional. For instance, it has not yet been found practicable to constitute satisfactory electorates for the representatives of Indian commerce, except in the Bombay council, or for the representatives of the Punjab landholders and Muhammadans on the Governor-General's council. Under the existing regulations each of these interests is represented by nominated members, but election is to be substituted for nomination as soon as a workable electorate can be formed.

The most difficult of the problems to be faced was the representation of Muhammadans, who claimed to be represented as a separate class or community. This problem has been attacked in various ways. One method adopted is a system of rotation. The representative of the Bombay landholders on the Governor-General's council was elected at the first, and is to be elected at the third and subsequent alternate elections, by the landholders of Sind, a great majority of whom are Muhammadans, while at other elections he is to be elected by the Sardars of Gujerat or the Sardars of the Deccan, a majority of whom are Hindus. In the Punjab the numbers of the Muhammadan and non-Muhammadan landholders are about equal, and the representative of this constituency is expected to be alternately a Muhammadan and a non-Muhammadan. When these two seats, the Bombay seat and the Punjab seat, are held by non-Muhammadans there are to be two members elected by special electorates consisting of Muhammadan landholders in the United Provinces and Muhammadans in Bengal.

In some provinces there are special interests, such as the tea and jute industries in Bengal and Assam, mining in Bihar and Orissa, and the planting communities in Madras and Bihar and Orissa, for whom special provision has been made.

The representation of smaller classes and minor interests will have to be met by nomination, in accordance with the needs of the time and the importance of different claims.

Where the electorates are scattered, as in the case of the landholders and the Muhammadans, provision is made for the preparation and publication of electoral rolls containing the names of all persons qualified to vote.

The qualifications prescribed for electors in the case of landholders and Muhammadans vary greatly from province to province. Landholders must usually possess a substantial property qualification. In some cases titles and honorary distinctions, fellowships of Universities, and pensions for public service are recognized as qualifications.

The qualifications for candidates are, as a rule, the same as those for electors, but in some cases, where such restrictions would be inappropriate, other qualifications are prescribed. Thus a person elected to the Governor-General's council by the unofficial members of a provincial council is required to have a place of residence within the province, and such practical connexion with the province as qualifies him to represent it. The election is either direct, or indirect through elected delegates. In some cases the electors or delegates vote at a single centre before a returning officer, in others they vote at different places before an attesting officer, who dispatches the voting paper to the returning officer.

In Bengal delegates have been abolished by the regulations of 1912, and all voting is direct.

The member of the Governor-General's council chosen to represent the Muhammadan community of Bombay is elected by the Muhammadan members of the Bombay council. The Government of India were assured that this method would secure better representation than election by delegates *ad hoc*.

The procedure for voting is generally similar to that prescribed by the English Ballot Act. But in some cases, such as the elections by the corporations of the presidency towns, the chambers of commerce and the trade associations, the voting is regulated by the procedure usually adopted by these bodies for the transaction of their ordinary business.

B. FUNCTIONS

The functions of the legislative councils fall into three divisions, (*a*) legislative, (*b*) deliberative, and (*c*) interrogatory.

(*a*) *Legislative*

The Act of 1909, and the regulations under it, make no alteration in the legislative functions and powers of the provincial councils. These are still mainly regulated by the Act of 1861.[1]

[1] See Digest, ss. 63–67, 76–78.

(*b*) *Deliberative*

Between 1861 and 1892 the powers of the legislative councils were confined strictly to legislation.[1] The Act of 1892 introduced non-legislative functions by empowering the head of the government in every case to make rules authorizing the discussion of the annual financial statement, provided that no member might propose a motion or divide the council. Under this power one or two days were allotted annually in every council to the discussion of a budget already settled by the executive government.

The Act of 1909 repealed the provisions of the Act of 1892 on this point and required rules to be made authorizing at any meeting of the legislative councils the discussion of the annual financial statement and of any matter of general public interest.[2]

The rules made under this direction introduce two important changes—

(i) The discussion of the budget is to extend over several days, it takes place before the budget is finally settled, and members have the right to propose resolutions and to divide the council upon them;

(ii) At meetings of the legislative councils matters of general public importance may be discussed, and divisions may be taken on resolutions proposed by members.

In each case the resolutions are to take the form of recommendations to the Government, and the Government is not bound to act upon them.

The rules framed for the Governor-General's council are printed in the Blue Book of 1910,[3] and are of such interest and importance as to justify their reproduction in an appendix to this chapter.[4] It may be useful to summarize here some of their leading provisions.

Financial Statement or Budget. The rules distinguish between the financial statement and the budget. The first means the

[1] See Digest, ss. 64, 77.

[2] 9 Edw. VII, c. 4, s. 5.

[3] 1910, Cd. 4987.

[4] Appendix III. The rules for the other councils are included in a Blue Book of 1913 (Cd. 6714), and are framed on similar lines.

preliminary financial estimates of the Governor-General in Council for the financial year next following. The second means the financial statement as finally settled by the Governor-General in Council. On a day appointed in each year by the Governor-General, the financial statement, with an explanatory memorandum, is to be presented to the council by the finance member, and a printed copy is to be supplied to each member. No discussion takes place on this day.

The first stage of discussion takes place on a subsequent day after the finance member has made any explanations he thinks necessary. On this day any member may move any resolution entered in his name in the list of business relating to any alteration in taxation, new loan or additional grant to local governments proposed or mentioned in the financial statement or explanatory memorandum, and a discussion takes place on any resolution so moved.

The second stage of discussion begins after these resolutions have been disposed of. The member of council in charge of a department explains the head or heads of the financial statement relating to his department, and resolutions may then be moved and discussed.

The range of discussion is subject to important restrictions. There is a schedule to the rules defining which heads of the financial statement are open to or are excluded from discussion. Among the excluded heads are military, political, and purely provincial affairs, under the heading 'revenue,' stamps, customs, assessed taxes, and courts, and, under the heading 'expenditure,' assignments and compensations, interest on debt, ecclesiastical expenditure, and state railways. Besides these the rules themselves exclude from discussion any of the following subjects:

(*a*) Any subject removed from the discussion of the Governor-General's legislative council by s. 22 of the Indian Councils Act, 1861.[1]

[1] i.e. matters which the Governor-General in Council has not power to repeal or affect by any law. See Digest, s. 63.

(*b*) Any matter affecting the relations of His Majesty's Government or of the Governor-General in Council with any Foreign State or any Native State in India ; or

(*c*) any matter under adjudication by a court of law having jurisdiction in any part of His Majesty's dominions.

Any resolution moved must comply with the following conditions :

(*a*) It must be in the form of a specific recommendation addressed to the Governor-General in Council ;

(*b*) it must be clearly and precisely expressed and must raise a definite issue ;

(*c*) it must not contain arguments, inferences, ironical expressions, or defamatory statements, nor refer to the conduct or character of persons except in their official or public capacity ;

(*d*) it must not challenge the accuracy of the financial statement ;

(*e*) it must be directly relevant to some entry in the financial statement.

Two clear days' notice of any resolution must be given. The president may disallow any resolution or part of a resolution without giving any reason other than that in his opinion it cannot be moved consistently with the public interests, or that it should be moved in a provincial council, and his decision cannot be challenged.

The budget as finally settled must be presented to the council on or before March 24 by the finance member, who then describes any changes made in the figures of the financial statement, and explains why any resolutions passed by the council have not been accepted. No discussion takes place on this day, but on a subsequent day there is to be a general discussion at which observations may be made, but resolutions may not be moved. Nor is the budget as a whole to be submitted to the vote of the council.

Many of the rules for regulating procedure in debate are of a kind with which members of the House of Commons are

familiar, but some of them present distinctive features. No speech may exceed fifteen minutes, except those of the mover and the member in charge, who may speak for thirty minutes. Any member may send his speech in print to the secretary not less than two clear days before the day fixed for the discussion of a resolution, with as many copies as there are members, and one copy is to be supplied to every member. Any such speech may at the discretion of the president be taken as read.

Matters of general public interest. Discussions on these matters must be raised by resolution, and must take place after all the other business of the day has been concluded. The general rules regulating the form of the resolutions, and the discussions upon them, are, in the main, the same as those for the discussion of resolutions on the financial statement, the chief difference being that the range of discussions is wider and that amendments are allowed. The only subjects specifically excluded from discussion are those belonging to the three classes mentioned above in connexion with the financial statement, namely, matters for which the councils cannot legislate, matters relating to foreign and native States, and matters under adjudication by a court of law. But the president has the same discretionary power of disallowing resolutions as he has in the case of resolutions on the financial statement.

The right to move amendments on resolutions is made subject to restrictions which are intended to provide safeguards against abuse of the right. Fifteen days' notice of a resolution is required, and priority depends on the time of receipt. When a question has been discussed, or a resolution has been disallowed or withdrawn, no resolution or amendment raising substantially the same question may be moved within one year.

(c) *Interrogatory*

Since 1892 members of the legislative councils have had the right to ask questions under conditions and restrictions prescribed by rules. This right is now enlarged by allowing a member to put a supplementary question for the purpose

of further elucidating any matter of fact regarding which a request for information has been made in his original question.' But the president may disallow a supplementary question, and the member to whom it is addressed may decline to answer it without notice. The rules which now govern the asking of questions in the Governor-General's council are printed in the Blue Book of 1910, and are to be found in Appendix II.

The quorum for the transaction of business, legislative or other, at meetings of the Governor-General's legislative council is fixed by one of the Regulations of 1912 for the constitution of that council. The Regulations for the several councils, in prescribing a quorum, omit reference to the presence of the president or vice-president (which is secured by statute) and merely state that, in order to form a quorum, a certain number of members must be present, viz., fifteen additional members in the Governor-General's council, and ten in the councils of Bengal, Madras, Bombay, and Bihar and Orissa, ten in the United Provinces, eight in the Punjab and Assam, and six in Burma.

The Indian High Courts Act, 1911 (1 & 2 Geo. V, c. 18):

(1) raised the maximum number of judges of an Indian High Court from sixteen to twenty,

(2) gave power to establish new high courts from time to time as occasion may require, and to make consequential changes in the jurisdiction of the courts, and

(3) gave power to appoint temporary additional judges of any high court for a term not exceeding two years.

The construction placed on the power to establish a new high court given by s. 16 of the Indian High Courts Act, 1861, had been, that the power was not recurrent and had been exhausted by the establishment of a high court at Allahabad.

The Government of India Act Amendment Act, 1911 (1 & 2 Geo. V, c. 25), amended the pension provisions of the

Government of India Act, 1858, by authorizing the grant of allowances to the personal representatives of deceased members of the India Office staff.

On December 12, 1911, at a Durbar held at Delhi, King George V commemorated in person his coronation in Westminster Abbey as King of the United Kingdom of Great Britain and Ireland, and of the British dominions beyond the seas, and as Emperor of India. The event was unprecedented in the annals of British India. Never before had an English king worn his imperial crown in India; indeed, never before had a British sovereign set foot on Indian soil. There had been a general expectation that an exceptional occasion would be signalized by exceptional announcements. The expectation was not disappointed. At the great Durbar, the King-Emperor, accompanied by the Queen-Empress, was surrounded by a vast assemblage, which included the governors and great officials of his Indian empire, the great feudatory princes and chiefs of India, representatives of the Indian peoples, and representatives from the military forces of his Indian dominions. Three announcements were made. The first was made by the King-Emperor himself and expressed his personal feelings and those of the Queen-Empress. The second was made by the Governor-General on behalf of the King-Emperor, and declared the grants, concessions, reliefs and benefactions which His Imperial Majesty had been pleased to bestow upon this glorious and memorable occasion. The third was made by the King-Emperor in person and ran as follows:

We are pleased to announce to Our People that on the advice of Our Ministers tendered after consultation with Our Governor-General in Council We have decided upon the transfer of the seat of the Government of India from Calcutta to the ancient Capital Delhi, and, simultaneously and as a consequence of that transfer, the creation at as early a date as possible of a Governorship for the Presidency of Bengal, of a new Lieutenant-Governorship in Council administering the areas of Bihar, Chota Nagpur, and Orissa, and of a Chief

Commissionership of Assam, with such administrative changes and redistribution of boundaries as Our Governor-General in Council with the approval of Our Secretary of State for India in Council may in due course determine. It is Our earnest desire that these changes may conduce to the better administration of India and the greater prosperity and happiness of Our beloved People.

The decisions thus announced had been for many months the subject of discussions in the English Cabinet, at the India Office, and in the Governor-General's Council, and of correspondence between the Government of India and the Secretary of State in England. But the secret had been well kept, and the result of these deliberations was not disclosed, either in England or in India, before the King-Emperor's announcement was made.

The correspondence which led up to the Durbar announcements is embodied in a dispatch from the Government of India dated August 25, 1911, and in the Secretary of State's reply of November 1, 1911. The dispatch states very fully the nature of the proposals submitted to the Secretary of State, and the reasons for them. The reply conveys a general assent. As both dispatch and reply are printed in an Appendix (III) to this book, it seems unnecessary to recapitulate their contents here.

The policy foreshadowed by the correspondence and announced at the Durbar embodied two great administrative changes; a remodelling of the partition of Bengal, and a transfer of the capital of India from Calcutta to Delhi.

In October, 1905, the huge province under the Lieutenant-Governor of Bengal had been divided into two lieutenant-governorships. Of these the western retained the old name of Bengal and the old seat of government at Calcutta, whilst the eastern was augmented by the addition of Assam, previously under a Chief Commissioner, was called Eastern Bengal and Assam, and had for its seat of government Dacca.

The rearrangement effected in pursuance of the Durbar announcements made the following changes:

1. It reunited the five Bengali-speaking divisions of the

old province of Bengal, and formed them into a presidency administered by a governor in council. The area of this presidency or province is approximately 70,000 square miles, and its population about 42,000,000. The capital is at Calcutta, but it is understood that Dacca is to be treated as a second capital, and that the governor will reside there, just as the lieutenant-governor of the United Provinces frequently resides at Lucknow.

2. It created a lieutenant-governorship in council, consisting of Bihar, Chota Nagpur, and Orissa, with a legislative council, and a capital at Patna. The area of this province is approximately 113,000 square miles, and its population about 35,000,000.

3. It detached Assam from Eastern Bengal and placed it again under a chief commissioner. Assam has an area of about 56,000 square miles, and a population of about 5,000,000.

These administrative changes were mainly effected under powers conferred by Acts relating to the government of India, but some supplementary legislation was required, both in India and in England.

The Secretary of State for India in Council made a formal declaration that the Governor-General of India should no longer be the governor of the presidency of Fort William in Bengal, but that a separate governor should be appointed for that presidency.[1]

By a royal warrant dated March 21, 1912, Lord Carmichael, previously governor of Madras, was appointed governor of the presidency of Fort William in Bengal.

By a proclamation notified on March 22, 1912, a new province was carved out of the previous lieutenant-governorship of Bengal, was called Bihar and Orissa, and was placed under a lieutenant-governor.[2]

By another proclamation of the same date the territories

[1] See notifications printed in Appendix IV.
[2] See notifications printed in Appendix IV.

that were in future to constitute the Presidency of Fort William in Bengal were delimited.[1]

And by a third proclamation of the same date the territories which had before 1905 constituted the chief commissionership of Assam were taken under the immediate authority and management of the Governor-General in Council, and again formed into a chief commissionership, called the chief commissionership of Assam.[2]

The authorities for the powers thus exercised are to be found by diligent search in the tangled mass of enactments relating to the government of India, and require some explanation.

By s. 16 of the Government of India Act, 1853 (16 & 17 Vict. c. 95), the court of directors of the East India Company, acting under the direction and control of the board of control, were empowered to declare that the Governor-General in Council should not be governor of the presidency of Fort William in Bengal, but that a separate governor was to be from time to time appointed in like manner as the governors of Madras and Bombay. In the meantime, and until a governor was appointed, there was power under the same section to appoint a lieutenant-governor of such part of the presidency of Bengal as was not under the lieutenant-governorship of the North-West (now United) Provinces.[3] The power to appoint a lieutenant-governor was exercised, and during the continuance of its exercise, the power to appoint a governor remained in abeyance. But it still existed, was inherited by the Secretary of State from the Court of Directors and the Board of Control, and was exercised in March, 1912, when a governorship was substituted for a lieutenant-governorship of Bengal.

Under s. 29 of the Government of India Act, 1858, the governors of Madras and Bombay are appointed by warrant under the Royal Sign Manual. The governor of Bengal is now appointed in like manner.[4]

[1] See Appendix IV. As to previous doubts about the extent of the Presidency, see below, p. 141, n. 2, and *Imperial Gazetteer of India*, vii. 195.

[2] See notifications printed in Appendix IV.

[3] See below, pp. 218, 219.

[4] See below, p. 215.

The power to constitute the new province of Bihar and Orissa and to appoint a lieutenant-governor of it was given by s. 46 of the Indian Councils Act, 1861.[1]

The power to delimit the territories of the presidency or province of Bengal was given by s. 47 of the Indian Councils Act, 1861, and s. 4 of the Government of India Act, 1865.[2]

The power to take Assam under the immediate authority and management of the Governor-General in Council and to place it under a chief commissioner was given by s. 3 of the Government of India Act, 1854.[3]

The territorial redistributions made by the proclamations of March 22 took effect on the following April 1. Under s. 47 of the Indian Councils Act, 1861,[4] laws in force in territories severed from a province remain in force until superseded by further legislation. But it was found in 1912, as it had previously been found after the alteration of provinces made in 1905, that a few minor adaptations were immediately needed to make the old laws fit the new conditions. These adaptations were made by an Act of the Governor-General in Council, which was framed on the lines of the Bengal and Assam Laws Act of 1905 (Act VII of 1905), and was, as a measure of urgency, passed through all its stages on March 25, 1912. The Act, among other things, constitutes a board of revenue for the province of Bihar and Orissa.

Further legislative provision, mostly of a technical character, was made by an Act of Parliament, the Government of India Act, 1912, which received the Royal Assent on June 25, 1912.[5]

The Act recites the proclamations of March 22, 1912,

[1] See below, pp. 244, 245.
[2] See below, pp. 243–5.
[3] See below, p. 220.
[4] See below, p. 244.
[5] For the debates in Parliament on the Coronation Durbar announcements and on the Government of India Act, 1912, see the Parliamentary Debates in the House of Lords on 12 December, 1911, and 21 and 22 February, 26 March, 12, 17, 18, and 20 June, and 29 July, 1912, and in the House of Commons on 12 December, 1911, and 14 February, 22 and 24 April, and 7 and 10 June, 1912.

and then goes on, by s. 1, to declare and explain the powers and position of the new governor of Bengal and his council.

When the Government of India Act, 1833, became law, the intention was to divide the overgrown presidency of Bengal into two presidencies (Fort William and Agra) and to have four presidencies, Fort William (Bengal), Fort St. George (Madras), Bombay, and Agra; and each of these four presidencies was to have a governor and council of its own. But this intention was not carried out. The presidency of Agra was never constituted, the governor-general and his council continued to be, under what had been meant to be a temporary provision, the governor and council of Fort William, and lieutenant-governors were in course of time appointed for the North-West (now United) Provinces and for Bengal.[1] But the provisions of the Act of 1833 were still applicable to the governor in council of Bengal, if and when constituted. What was needed, when that event took place in 1912, was to apply to the governor and council of Bengal those provisions, mostly in Acts subsequent to 1833, which applied exclusively to the governors and councils of Madras and Bombay. Among the provisions so applied are those which relate to legislative councils, to the right of the governor to act as governor-general in the governor-general's absence, to the salaries of the governors and their councils, and to the number and qualifications, under s. 2 of the Act of 1909, of the members of the executive councils.

The reason for proviso (*a*) to s. 1 was the possibility of its being found convenient that certain powers previously exercisable by the Governor-General with respect to the presidency of Fort William, such as the powers with respect to the appointment of temporary judges of the high court under s. 3 of the Indian High Courts Act, 1911 (1 & 2 Geo. V, c. 18), should be retained by the Governor-General. The words 'to the like extent as heretofore' show that these powers will

[1] See below, p. 218, &c.

continue to be exercised over the whole of the old presidency of Fort William.

The effect of proviso (*b*) is to make the appointment of the advocate-general to the legislative council of Bengal optional. In Madras and Bombay the appointment is obligatory,[1] but a doubt was felt whether the advocate-general would be available at Calcutta if he remained a member of the Governor-General's legislative council.

Subsection (2) of s. 1 transferred to the governor of Bengal the powers of the Governor-General in Council under s. 1 of the Indian Presidency Towns Act, 1815, to extend the limits of the town of Calcutta.[2] This power was evidently conferred on the Governor-General in his capacity of governor of Bengal.

Section 2 of the Act authorized the creation of an executive council for the new province of Bihar and Orissa. Section 3 of the Indian Councils Act, 1909, had authorized the creation of an executive council to assist the lieutenant-governor of Bengal. It also gave power to create by proclamation an executive council for any other province under a lieutenant-governor, but in any such case the power was not to be exercised until the proclamation had been laid before each house of Parliament, and either house might object. In order to facilitate the immediate establishment of an executive council for Bihar and Orissa, the Act of 1912 dispensed with further reference to Parliament. An executive council has now been established, consisting of the Maharaja of Darbhanga and two English members.

Section 3 authorized the establishment of legislative councils for provinces under chief commissioners. Under the previous law legislative councils could only be established for provinces under lieutenant-governors. The new power was required primarily to enable continuance of government with a legislative council for Assam, but was wide enough to cover other provinces, such as the Central Provinces. A legislative

[1] See below, p. 241. [2] See below, p. 223.

council was established for Assam on November 14, 1912, and a legislative council for the Central Provinces on November 10, 1913. The reason for negativing the proviso to s. 3 of the Act of 1854 was that the alteration of laws and regulations in a chief commissionership having a legislative council will be made in ordinary cases by that council and not by the Governor-General's legislative council.

Section 4 made sundry minor amendments and repeals. The amendments set out in Part I of the schedule referred to in this section are consequential. The first amendment extended to the governor of the presidency of Fort William in Bengal the provisions of the Indian Councils Act, 1861, which provide for the senior governor of a presidency acting as viceroy during any interval when there is not a viceroy. The second amendment fixed the maximum number of members of the legislative councils of the presidency of Bengal and of the province of Bihar and Orissa.

Under s. 57 of the Act of 1793 and s. 71 of the Act of 1833 an appointment to fill a vacancy in an office reserved to civil servants had to be made from amongst the members of the civil service belonging to the presidency in which the vacancy occurred. In 1793 the presidency of Fort William in Bengal included the whole of British India outside the presidencies of Madras and Bombay. The presidential restriction had frequently given rise to practical difficulties, and now that the limits of the presidency of Fort William in Bengal are confined to those of Bengal proper, the restriction, so far as that presidency is concerned, could not be justified. The repeal will, however, operate also within the presidencies of Madras and Bombay, and enable members of the present Madras and Bombay services to be appointed to any civil appointment in India. Section 71 of the Act of 1833 referred to the presidency of Agra, which was contemplated but never created, and therefore has always been a dead letter.

The other repeals mentioned in the Schedule are purely consequential on the provisions of the Act.

The object of the saving in subsection (2) of s. 4 was to remove any possible doubt as to whether the effect of the new Act might not be to prevent any adjustment or alteration of boundaries of the presidency of Fort William in Bengal and the new province of Bihar and Orissa. The declaration in the same subsection removes a doubt which had been entertained whether under s. 4 of the Government of India Act, 1865, territory could be transferred from a presidency or lieutenant-governorship to a chief commissionership.[1] It is now made clear that under this section territory can be transferred both to and from a chief commissionership.

In the past the transfer of territories for the purpose of forming a chief commissionership had been effected under the power given by s. 3 of the Government of India Act, 1854 (17 & 18 Vict. c. 77).[2] This power was exercised in 1901 to transfer territories from the lieutenant-governorship of the Punjab to the chief commissionership of the North-West Frontier Province. In September, 1912, it was similarly exercised to transfer the city of Delhi and part of the Delhi district from the same lieutenant-governorship and take it under the immediate authority and management of the Governor-General in Council, and to form it into a chief commissionership to be known as the Province of Delhi. An Indian Act, the Delhi Laws Act, 1912 (XIII of 1912), has adapted the old laws to the new conditions. The intention is to make the site of the new capital and its surroundings an *enclave* occupying the same kind of position as Washington and the District of Columbia in the United States.

The new government buildings and the new government house will be placed, not, as was originally intended, to the north of the present city of Delhi and on the site of the Coronation Durbar, but to the south-west of the city on the slope of the low range of hills which represents the southerly extension of the historic ridge to the Aravalli Hills. The new government house, when the site has been finally fixed, will probably

[1] See below, pp. 220, 221.

[2] See below, p. 220.

be within two to three miles of the Ajmir gate of the old city, and about a mile and a half west of the tomb of Humaiyun.

The redistribution of territories made in pursuance of the Delhi Durbar proclamations involved important changes in the regulations of 1909 for the constitution of legislative councils in India, and a general revision of those regulations was made in 1912. The reasons for this revision, and the nature and effect of the changes made, were explained in a dispatch from the Government of India, dated January 23, 1913, and in an accompanying memorandum. The dispatch and memorandum are printed in Appendix V to this book, and will, with the revised regulations, be found in a recent Blue Book (1913, Cd. 6714).

The state entry into Delhi for the inauguration of the new capital on December 23, 1912, was marred by the nefarious attempt on the life of the Viceroy, Lord Hardinge of Penshurst.[1]

[1] For the correspondence on this deplorable incident see the paper presented to Parliament in 1913 (Cd. 6642).

[The authorities which I found most useful when writing this chapter were: Reports of Parliamentary Committees *passim*; Calendar of State Papers, Colonial. East Indies; Shaw, *Charters of the East India Company*, Madras, 1887; Birdwood, *Report on the Old Records of the India Office*, 2nd reprint, 1891; Morley's *Digest*, Introduction; Stephen (J. F.), *Nuncomar and Impey*, 1885; Forrest (G.), *Selections from State Papers, India*, 1772–85; and, for general history, Hunter (Sir W. W.), *History of British India* (only 2 vols. published); Lyall (Sir A. C.), *British Dominion in India*; Lecky, *History of England in the 18th century*; Hunt (W.), *Political History of England*, 1760–1801; and Mill's *History of British India*, with its continuation by Wilson. A useful bibliography is appended to Sir Thomas Holderness's *Peoples and Problems of India*, in the Home University Library.]

CHAPTER II

SUMMARY OF EXISTING LAW

THE administration of British India rests upon English Acts of Parliament, largely supplemented by Indian Acts and regulations.[1]

Home Government. Secretary of State.

At the head of the administration in England is the Secretary of State, who exercises, on behalf of the Crown, the powers formerly exercised by the Board of Control and Court of Directors, and who, as a member of the Cabinet, is responsible to, and represents the supreme authority of, Parliament.[2]

Council of India.

He is assisted by a council, the Council of India, consisting of such number of members, not less than ten and not more than fourteen, as the Secretary of State may from time to time determine. The members of the council are appointed by the Secretary of State, and hold office for a term of seven years, with a power of reappointment under special circumstances for a further term of five years. At least nine members of the council must be persons who have served or resided in British India for not less than ten years, and who have left British India not more than five years before their appointment. A member of the council cannot sit in Parliament.[3]

The duties of the Council of India are to conduct, under the direction of the Secretary of State, the business transacted in the United Kingdom in relation to the government of India and the correspondence with India. The Secretary of

[1] For authorities on the existing system of administration see the bibliography appended to the very useful little book *Peoples and Problems of India*, by Sir Thomas Holderness, in the Home University Library. The latest of the Decennial Reports on the Moral and Material Progress of India (1913) should also be consulted.

[2] Digest, s. 2.

[3] Ibid. 2, 3.

State is president of the council, and has power to appoint a vice-president.[1]

Every order proposed to be made by the Secretary of State must, before it is issued, be either submitted to a meeting of the council or deposited in the council room for seven days before a meeting of the council. But this requirement does not apply to orders which, under the old system, might have been sent through the secret committee.[2]

In certain matters, including the expenditure of the revenues of India, orders of the Secretary of State are required by law to obtain the concurrence of a majority of votes at a meeting of his council, but in all other matters the Secretary of State can overrule his council. Whenever there has been a difference of opinion in council any member has a right to have his opinion, and the reasons for it, recorded.[3]

The council is thus, in the main, a consultative body, without any power of initiation, and with a limited power of veto. Even on questions of expenditure, where they arise out of previous decisions of the Cabinet, as would usually be the case in matters relating to peace or war, or foreign relations, it would be very difficult for the Council to withhold their concurrence from the Secretary of State when he acts as representative and mouthpiece of the Cabinet.

For the better transaction of business the council is divided into *committees*.[4]

Staff of India Office.

The establishment of the Secretary of State, that is to say the permanent staff constituting what is popularly known as the India Office, was fixed by an Order of the Queen in Council made under the Act of 1858.[5] It is divided into departments, each under a separate permanent secretary, and the committees of the council are so formed as to correspond to these departments.

Indian revenues.

All the revenues of India are required by law to be received for and in the name of the King, and to be applied and

[1] Digest, ss. 5–10. [2] Ibid. 12–14. [3] Ibid. 10.
[4] Ibid. 11. [5] Ibid. 18.

disposed of exclusively for the purposes of the Government of India.[1] The expenditure of these revenues, both in India and elsewhere, is declared to be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of the revenues is to be made without the concurrence of a majority of the votes at a meeting of the Council of India.[2] Except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India are not, without the consent of both Houses of Parliament, to be applicable to defraying the expenses of any military operation carried on beyond the external frontiers of those possessions by His Majesty's forces charged upon those revenues.[3]

Audit. The accounts of the Indian revenues and expenditure are laid annually before Parliament, and the accounts of the Secretary of State in Council are audited by an auditor, who is appointed by the King by warrant countersigned by the Chancellor of the Exchequer.[4]

Contracts and legal proceedings. For the purpose of legal proceedings and contracts, but not for the purpose of holding property, the Secretary of State in Council is a juristic person or body corporate by that name, having the same capacities and liabilities as the East India Company.[5] He has also statutory powers of contracting through certain officers in India.[6]

Government in India. The governor-general. At the head of the Government in India is the governor-general, who is also viceroy, or representative of the King. He is appointed by the King by warrant under his sign manual, and usually holds office for a term of five years.[7]

The governor-general's council. He has a council, which at present consists of six members, besides the commander-in chief, who may be, and in practice always is, appointed an extraordinary member.[8]

The Governor of Bengal, Madras or Bombay is also an

[1] Digest, s. 22.

[2] Ibid. 23. See, however, the practical qualifications of this requirement noted above.

[3] Ibid. 24. [4] Ibid. 29, 30. [5] Ibid. 32, 35.

[6] Ibid. 33. [7] Ibid. 36, 37. [8] Ibid. 38–40.

extraordinary member of the council whenever it sits within his province (which, in fact, never happens).[1]

The power given by an Act of 1874 to appoint a sixth ordinary member specifically for public works purposes was made general by an Act of 1904.

The ordinary members of the governor-general's council are appointed by the Crown, in practice for a term of five years. Three of them must be persons who, at the time of their appointment, have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, of not less than five years' standing.[2]

If there is a difference of opinion in the council, in ordinary circumstances the opinion of the majority prevails, but, in exceptional circumstances, the governor-general has power to overrule his council.[3]

If the governor-general visits any part of India unaccompanied by his council, he is empowered to appoint some ordinary member of his council to be president of the council in his place, and, in such case, there is further power to make an order authorizing the governor-general alone to exercise all the executive powers of the Governor-General in Council.[4]

The official acts of the central Government in India are expressed to run in the name of the Governor-General in Council, often described as the Government of India.[5] The executive work of the Government of India is distributed among departments which may be compared to the departments of the central Government in England. There are at present nine of these departments—Finance, Foreign, Home, Legislative, Revenue and Agriculture, Public Works, Commerce and Industry, Army, and Education. At the head of each of them is one of the secretaries[6] to the Government

[1] Digest, s. 40. [2] Ibid. 39. [3] Ibid. 44. [4] Ibid. 45, 47.

[5] Legislative sanction for this name is given by the Indian General Clauses Act (X of 1897. s. 3 (22)).

[6] In the case of the department of education there is, in addition to the secretary, a joint secretary who is a member of the Indian educational service.

of India, who corresponds to the permanent secretary in England, and each of them, except the Foreign Department, is assigned to the special care of one of the members of council. The Foreign Department is under the immediate superintendence of the viceroy, who may be thus called his own foreign minister, although members of the council share responsibility for such matters relating to the department as come within their cognizance.

Besides these nine departments of the Secretariat, there are special departments, outside the Secretariat departments but attached to some one of them. These special departments either transact branches of work which the Government of India keeps in its own hands, or exercise supervision over branches of work which are conducted by the Local Governments. Thus the Director-General of the Posts and Telegraphs, the Surveyor-General, and the Railway Board, are at the head of departments which are centrally administered. On the other hand, the Inspector-General of Forests, and the Director-General of the Indian Medical Service, represent departments which are administered by the Local Governments but supervised by the Government of India.

In the transaction of business, minor questions are settled departmentally. Questions involving a difference of opinion between two departments, or raising any grave issue, are brought up to be settled in council.

The council usually meets once a week, but special meetings may be summoned at any time. The meetings are private, and the procedure is of the same informal kind as at a meeting of the English Cabinet, the chief difference being that one of the secretaries to the Government usually attends during the discussion of any question affecting his department, and takes a note of the order passed.[1]

[1] For a description of the mode of transacting business in council before the work of the Government was 'departmentalized,' see *Lord Minto in India*, p. 26, and as to the effect of departmentalizing, see Strachey, p. 68.

Every dispatch from the Secretary of State is circulated among all the members of the council, and every dispatch to the Secretary of State is signed by every member of the council who is present at headquarters, as well as by the viceroy, unless he is absent.

If any member of the council dissents from any dispatch signed by his colleagues, he has the right to append to it a minute of dissent.

The headquarters of the Government of India are at Delhi during the cold weather season, and at Simla during the rest of the year.[1]

The local governments.

For purposes of administration British India is now divided into fifteen provinces, each with its own local government. These provinces are the old presidencies[2] of Bengal (Fort William), Madras (Fort St. George), and Bombay; four Lieutenant-Governorships, namely, Bihar and Orissa,[3] the United Provinces of Agra and Oudh,[4] the Punjab, and Burma;[5] and eight Chief Commissionerships, namely, the Central Provinces, Assam, Delhi, Ajmere-Merwara, Coorg, British Baluchistan,[6] the North-West Frontier Province,[7] and the Andaman Islands.

The provinces of Bengal, Madras, and Bombay are each under a governor and council appointed by the Crown, in practice for a term of five years, the governor being usually an English statesman, and the council consisting at present of three members of whom two are members of the Indian Civil

[1] As to the advantages and disadvantages of Simla as a seat of Government, see Minutes by Sir H. S. Maine, No. 70.

[2] As to the ambiguity of the term 'presidency,' see Chesney, *Indian Polity* (3rd ed.), pp. 79, 88. *Imp. Gazetteer*, vii. 195.

[3] Constituted in 1912 out of territories previously forming part of the Presidency of Fort William in Bengal. See Act VII of 1912.

[4] Constituted in 1901 by the union of the Lieutenant-Governorship of the North-Western Provinces with the Chief Commissionership of Oudh.

[5] Placed under a lieutenant-governor in 1897.

[6] Made a Chief Commissionership in 1887.

[7] Carved out of the Punjab, and placed under a Chief Commissioner in 1901.

Service of twelve years' standing.[1] The governors of Bengal, Madras, and Bombay have the privilege of communicating directly with the Secretary of State, and have the same power as the governor-general of overruling their councils in cases of emergency. For reasons which are mainly historical, the control of the Government of India over the Governments of Madras and Bombay, and now over the Government of Bengal, is less complete than over other local Governments.

The lieutenant-governors have, as a rule, no executive councils,[2] and are appointed by the governor-general, with the approval of the King.[3] They are in practice appointed from the Indian Civil Service,[4] and hold office for five years.

The chief commissioners are appointed by the Governor-General in Council. In some cases this office is combined with another post. Thus the Resident at Mysore is, *ex officio*, Chief Commissioner of Coorg, and the Governor-General's Agent for Rajputana is, *ex officio*, Chief Commissioner of Ajmere-Merwara. So also the Chief Commissioners of British Baluchistan and of the North-West Frontier Province are Governor-General's Agents for dealing with the neighbouring tribes outside British India.

Under an arrangement made in 1902 the 'Assigned Districts' of Berar are leased in perpetuity to the British Government, and are administered by the Chief Commissioner of the Central Provinces.

Indian legislation.

The constitution of the Governor-General's legislative council was materially altered by the Indian Councils Act, 1909, and the regulations under it, which were further revised in 1912. Its existing constitution is described above in Chapter I, and in the Digest.

[1] Digest, ss. 50, 51. Under the Indian Councils Act, 1909, there is power to increase the number to four.

[2] The Lieutenant-Governor of Bihar and Orissa has an Executive Council, established in 1912.

[3] Digest, s. 55. Under the Indian Councils Act, 1909, there is power to constitute executive councils for lieutenant-governors.

[4] There may have been exceptions, e.g. Sir H. Durand.

The legislature thus formed bears the awkward name of 'the Governor-General in Council at meetings for the purpose of making laws and regulations.' But the council as constituted for legislative purposes is usually described as the legislative council of the Governor-General.

The Governor-General in Council at these meetings has power to make laws—

(*a*) for all persons, for all courts, and for all places and things within British India ; and

(*b*) for all British subjects of His Majesty and servants of the Government of India within other parts of India, that is to say, within the Native States ; and

(*c*) for all persons being native Indian subjects of His Majesty, or native Indian officers or soldiers in His Majesty's Indian forces when in any part of the world, whether within or without His Majesty's dominions ; and

(*d*) for all persons employed or serving in the Royal Indian Marine.[1]

But this power is subject to various restrictions. For instance, it does not extend to the alteration of any Act of Parliament passed since 1860, or of certain specified portions of earlier Acts,[2] and does not enable the legislature to make any law affecting the authority of Parliament or any part of the unwritten laws or constitution of the United Kingdom whereon may depend the allegiance of any person to the Crown or the sovereignty or dominion of the Crown in any part of British India.[3]

Measures affecting the public debt or revenues of India, the religion or religious rites or usages of any class of His Majesty's subjects in India, the discipline or maintenance

[1] Digest, s. 63. As to whether there is any power to legislate for servants of the Government outside 'India,' see the note (*c*) on that section.

[2] Namely, 3 & 4 Will. IV, c. 85, except ss. 84 and 86 ; 16 & 17 Vict. c. 95 ; 17 & 18 Vict. c. 77 ; 21 & 22 Vict. c. 106 ; 22 & 23 Vict. c. 41. See 24 & 25 Vict. c. 67, s. 22, as amended by 32 & 33 Vict. c 98, s. 2.

[3] Digest, s. 63.

of the military or naval forces, or the relations of the Government with foreign States, cannot be introduced by any member without the previous sanction of the governor-general.[1] Every Act requires the governor-general's assent, unless it is reserved by him for the signification of His Majesty's pleasure, in which case the power of assenting rests with the Crown. The assent of the Crown is in other cases not necessary to the validity of an Act, but any Act may be disallowed by the Crown.[2]

The legislative procedure at meetings of the Legislative Council is regulated by rules made by the council and assented to by the governor-general.[3]

Under the Act of 1861 the powers of the Legislative Council were strictly confined to the consideration of measures introduced into the council for the purpose of enactment or the alteration of rules for the conduct of business.[4] But by the Indian Councils Act, 1909, and the rules made under it, powers are given to discuss and move resolutions on the annual financial statement, to move resolutions on matters of general public interest, and to ask questions, including supplementary questions. For the rules on these subjects see Appendix II. Under the rules made in pursuance of this power the annual financial statement must be made publicly in the council. Every member is at liberty to make any observations he thinks fit, and the financial member of the council and the president have the right of reply. Under the same rules due notice must be given of any question, and every question must be a request for information only, and must not be put in argumentative, or hypothetical, or defamatory language. No discussion is permitted in respect of an answer given on behalf of the Government, and the president may disallow any question which, in his opinion, cannot be answered consistently with the public interest.

[1] Digest, s. 64.
[2] Ibid. 65, 66.
[3] Ibid. 67.
[4] See above, p. 100.

Besides the formal power of making laws through the Legislative Council, the governor-general has also, under an Act of 1870,[1] power to legislate in a more summary manner, by means of regulations, for the government of certain districts of India of a more backward character, which are defined by orders of the Secretary of State, and which are 'scheduled districts' within the meaning of certain Acts of the Indian Legislature. Under a section of the Act of 1861[2] the governor-general has also power, in cases of emergency, to make temporary ordinances which are to be in force for a term not exceeding six months.

The Governor-General in Council also exercises certain legislative powers with respect to Native States, but in his executive capacity, and not through his legislative council.[3]

Local legislatures

Local legislatures were established by the Indian Councils Act, 1861, for the provinces of Madras and Bombay, and have, under the powers given by that Act and by the Government of India Act 1912, since been established for Bengal, for the United Provinces of Agra and Oudh as constituting a single province, for the Punjab, for Burma, for the province of Bihar and Orissa, and for the Chief Commissionerships of Assam, and of the Central Provinces. The constitutions of the local legislatures are now regulated by the Indian Councils Act, 1909, and the regulations under it, and by section 3 of the Government of India Act, 1912 (relating to Chief Commissionerships). They are described in Chapter I and in the Digest.

The powers of the local legislatures are more limited than those of the governor-general in his legislative council. They cannot make any law affecting any Act of Parliament for the time being in force in the province, and may not,

[1] 33 Vict. c. 3, s. 1, above, p. 105. Digest, s. 68.
[2] 24 & 25 Vict. c. 67, s. 23. Digest, s. 69.
[3] See Chapter V.

without the previous sanction of the governor general, make or take into consideration any law—

(*a*) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India; or

(*b*) regulating any of the current coin, or the issuing of any bills, notes, or other paper currency; or

(*c*) regulating the conveyance of letters by the post office or messages by the electric telegraph within the province; or

(*d*) altering the Indian Penal Code; or

(*e*) affecting the religion or religious rites or usages of any class of His Majesty's subjects in India; or

(*f*) affecting the discipline or maintenance of any part of His Majesty's naval or military forces; or

(*g*) regulating patents or copyright; or

(*h*) affecting the relations of the Government with foreign princes or States.[1]

Until 1892 their powers were much restricted by their inability to alter any Act of the Governor-General in Council, but under a provision of the Indian Councils Act, 1892, the local legislature of any province may, with the previous sanction of the governor-general, repeal or amend as to that province any law or regulation made by any other authority in India.[2]

Acts passed by a local legislature in India require the assent of the governor-general, and are subject to disallowance by the Crown in the same manner as Acts of the governor-general's legislative council.[2] The restrictions on the subjects of discussion at that council also apply to meetings of the local legislatures.[3]

No precise line of demarcation is drawn between the subjects which are reserved to the control of the local legis-

[1] Digest, s. 76. [2] Ibid. 78. [3] Ibid. 77.

latures respectively.[1] In practice, however, the governor-general's council confines itself to legislation which is either for provinces having no local legislatures of their own, or on matters which are beyond the competency of the local legislatures, or on branches of the law which require to be dealt with on uniform principles throughout British India. Under this last head fall the so-called Indian codes, including the Penal Code, the Codes of Civil and Criminal Procedure, the Succession Act, the Evidence Act, the Contract Act, the Specific Relief Act, the Negotiable Instruments Act, the Transfer of Property Act, the Trusts Act, and the Easements Act.

Indian Law

The law administered by the courts of British India consists, so far as it is enacted law, of—

(1) Such Acts of Parliament as extend, expressly or by implication, to British India ;[2]

(2) The regulations made by the Governments of Madras, Bengal, and Bombay before the coming into operation of the Government of India Act, 1833 (3 & 4 Will. IV, c. 85) ;[3]

(3) The Acts passed by the Governor-General in Council under the Government of India Act, 1833, and subsequent statutes ;[4]

[1] As to the relations between the governor-general's council and local legislatures, see Minutes by Sir H. S. Maine, No. 69.

[2] See the Statutes relating to India, published by the Indian Legislative Department in 1913.

[3] The Bengal Regulations passed before 1793 were in that year collected and passed by Lord Cornwallis in the shape of a revised code. 675 Regulations were passed between 1793 and 1834, both inclusive, but of these only eighty-nine are now wholly or partly in force. Such of them as are still in force are to be found in the volumes of the Bengal Code published by the Bengal Legislative Department.

Of the 251 Madras Regulations, twenty-eight are still wholly or partly in force, and are to be found in the Madras Code.

The Bombay Regulations were revised and consolidated by Mountstuart Elphinstone in 1827. Twenty Bombay Regulations are still wholly or partly in force, and are to be found in the Bombay Code.

[4] Revised editions of these Acts, omitting repealed matter, have been published by the Indian Legislative Department. Such of them as relate

(4) The Acts passed by local legislatures;[1]

(5) The Regulations made by the governor-general under the Government of India Act, 1870 (33 Vict. c. 3);[2]

(6) The Ordinances, if any, made by the governor-general under s. 23 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), and for the time being in force.[3]

To these may be added—

(7) Orders in Council made by the King in Council and applying to India.[4]

(8) Statutory rules made under the authority of English Acts.[5]

(9) Rules, orders, regulations, by-laws, and notifications made under the authority of Indian Acts.[6]

(10) Rules, laws, and regulations made by the governor-general or the Governor-General in Council for non-regulation provinces before 1861, and confirmed by s. 25 of the Indian Councils Act, 1861.[7]

These enactments are supplemented by such portions of the Hindu, Mahomedan, and other native laws and customs as are still in force, and by such rules or principles of European, mainly English, law as have been applied to the country,

only to particular provinces are to be found in the 'Codes' for these provinces published by the Legislative Department.

[1] These Acts are to be found in the volumes of 'Codes' mentioned above.

[2] A Chronological Table of and Index to these five classes of enactments have been compiled by the Indian Legislative Departments.

[3] See Digest, s. 69.

[4] See e.g. the Order in Council confirming the Extradition (India) Act, 1895 (IX of 1895), *Statutory Rules and Orders Revised*, v. 297; the Zanzibar Order in Council of 1897, which gives an appeal from the British Court in Zanzibar to the Bombay High Court, *Statutory Rules and Orders Revised*, v. 87; and the Indian (Foreign Jurisdiction) Order in Council, 1902, printed below, p. 418.

[5] e.g. the rules made under s. 8 of the Indian Councils Act, 1861 (Digest, s. 43), and under ss. 1 & 2 of the Indian Councils Act, 1892 (Digest, ss. 60, 64).

[6] Lists and a collection of such of these as are of general application have been published by the Indian Legislative Department. Lists and collections of rules, &c., of local application have been published by most Local Governments.

[7] See above, p. 102. Probably most, if not all, of this body of laws has expired or been superseded.

either under the direction to act in accordance with justice, equity, and good conscience, or in other ways, and as have not been superseded by Indian codification.

Native law has been wholly superseded, as to criminal law and procedure and as to civil procedure, by the Indian Penal Code, the Indian Codes of Criminal and Civil Procedure, the Evidence Act, and other enactments, and has been largely superseded as to other matters by Anglo-Indian legislation but still regulates, as personal law, most matters relating to family law and to the law of succession and inheritance among Hindus, Mahomedans, and other natives of the country.[1]

The East India Company Act, 1793 (33 Geo. III, c. 52), reserved to members of the covenanted civil service[2] the principal civil offices in India under the rank of member of council. Appointments to this service were made in England by the Court of Directors. The Indian Civil Service

The Government of India Act, 1853 (16 & 17 Vict. c. 95), threw these appointments open to competition among natural-born subjects of Her Majesty, and this system was maintained by the Act of 1858, which transferred the government of India to the Crown.[3] The first regulations for the competitive examinations were framed by Lord Macaulay's committee in 1854, and have since been modified from time to time. Under the existing rules the limits of age for candidates are *from twenty-two to twenty-four*. *Successful candidates* remain on probation for one year, and then have to pass an examination in subjects specially connected with their future duties. If they pass, they receive their appointments from the Secretary of State. Probationers are encouraged by a special allowance of £150 to pass their probationary year

[1] See below, Chapter IV.

[2] So called from the covenants into which the superior servants of the East India Company were required to enter, and by which they were bound not to trade, not to receive presents, to subscribe for pensions, and so forth. Members of the civil service of India are still required to enter into similar covenants before receiving their appointments.

[3] See Digest, s. 92.

at a University or College approved by the Secretary of State.

The Indian Civil Service Act, 1861 (24 & 25 Vict. c. 54), whilst validating certain irregular appointments which had been made in the past, expressly reserved in the future to members of the covenanted service all the more important civil posts under the rank of member of council in the regulation provinces. The schedule of reserved posts, which is still in force,[1] does not apply to non-regulation provinces, such as the Punjab, Oudh, the Central Provinces, and Burma, where the higher civil posts may be, and in practice often are, filled by military officers belonging to the Indian Army, and others.

An Act of 1870 (33 Vict. c. 3), after reciting that 'it is expedient that additional facilities should be given for the employment of natives of India, of proved merit and ability, in the civil service of Her Majesty in India,' authorized the appointment of any native of India to any office, place, or employment in the civil service in India, without reference to any statutory restriction, but subject to rules to be made by the Governor-General in Council with the sanction of the Secretary of State in Council.[2]

Little was done under this Act until rules for regulating appointments under it were made during Lord Lytton's government in 1879. The intention was that about a sixth of the posts reserved by law to the covenanted civil service should be filled by natives of India appointed under these rules; and for the purpose of giving gradual effect to this scheme, the number of appointments made in England was in 1880 reduced by one-sixth. The persons appointed under the rules were often described as 'statutory civilians,' and about sixty natives of India had been so appointed when the system was changed in 1889. The rules did not work satisfactorily, and in 1886 a commission, under the presidency of Sir Charles Aitchison, was appointed by the Government of India with instructions 'to devise a scheme which might reasonably be

[1] Digest, s. 93. [2] Ibid. 94.

hoped to possess the necessary elements of finality, and to do full justice to the claims of natives of India to higher employment in the public service.'

Under the scheme established in pursuance of the recommendations of Sir Charles Aitchison's commission a provincial civil service has been formed by the amalgamation of the higher appointments in what was previously known as the uncovenanted civil service with a certain number of appointments previously held by the covenanted civil service. The lower grade appointments of what had been the uncovenanted civil service are now styled the 'subordinate service.' There are thus three classes of the general civil service, (1) the Indian Civil Service, (2) the Provincial Service, and (3) the Subordinate Service. The Indian Civil Service is recruited by open competition in England. The other two services are recruited provincially and consist almost entirely of natives of the province. The provincial service is fed mainly by direct recruitment, but, in exceptional cases, by promotion from the subordinate service. In the executive branch the lowest grade in the provincial service is the deputy collector, the highest in the subordinate service is the tahsildar. Judicial officers of all grades belong to the provincial service.[1]

Besides this general service, there are special services such as the education department, the public works department, the forest department, and the police department. Appointments to the highest posts in these departments are as a rule made in England. The other posts are recruited provincially, and are, like posts in the general service, graded as belonging either to a provincial service, or to a subordinate service.[2]

The chartered high courts.

It is only with reference to the four chartered high courts that the judicial system of India is regulated by English statute. Under the Regulating Act of 1773 (13 Geo. III,

[1] As to the proportion of Englishmen in the Indian Civil Service, see Strachey, *India*, p. 90.

[2] See East India (Progress and Condition) Decennial Report, 1904, pp. 58–60.

c. 63), a supreme court was established by charter for Calcutta, and similar courts were established for Madras in 1800 (39 & 40 Geo. III, c. 79), and for Bombay in 1823 (4 Geo. IV, c. 71). The Act of 1781 (21 Geo. III, c. 70) recognized an appellate jurisdiction over the country courts established by the Company in the Presidency of Bengal.[1]

The Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), amalgamated the supreme and sadr courts at the three presidency towns (that is to say, the courts exercising the jurisdiction of the Crown and the appellate and supervisional jurisdiction of the Company at those towns), by authorizing the establishment of chartered high courts inheriting the jurisdiction of both these courts. The charters now regulating these high courts were granted in December, 1865. The same Act authorized the establishment of a new high court, and accordingly a charter establishing the High Court at Allahabad was granted in 1866. Other chartered high courts may now be established under an Act of 1911, 1 & 2 Geo. V, c. 18.

Each of the four chartered high courts consists of a chief justice, and of as many other judges, not exceeding nineteen, as His Majesty may think fit to appoint.[2]

A judge of a chartered high court must be either—

(*a*) a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing; or

(*b*) a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a district judge; or

(*c*) a person having held judicial office not inferior to that of a subordinate judge, or judge of a small cause court, for not less than five years; or

(*d*) a person having been a pleader of a high court for not less than ten years.[2]

But not less than one-third of the judges, including the

[1] See above, p. 57.

[2] Digest, s. 96.

chief justice, must be barristers or advocates, and not less than one-third must be members of the Indian Civil Service.[1]

Every judge of a chartered high court holds office during His Majesty's pleasure,[2] and his salary, furlough, and pension are regulated by order of the Secretary of State in Council.[3] Temporary vacancies may be filled by the Governor-General in Council in the case of the high court at Calcutta, and by the local government in other cases.[4]

The jurisdiction of the chartered high courts is regulated by their charters,[5] and includes the comprehensive jurisdiction formerly exercised by the supreme and sadr courts.[6] They are also expressly invested by statute (24 & 25 Vict. c. 104, s. 15) with administrative superintendence over the courts subject to their appellate jurisdiction, and are empowered to—

(*a*) call for returns;

(*b*) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

(*c*) make general rules for regulating the practice and proceedings of those courts;

(*d*) prescribe forms for proceedings in those courts, and for the mode of keeping book entries or accounts by the officers of the courts; and

(*e*) settle tables of fees to be allowed to the sheriff, and to the attorneys, clerks, and officers of the courts.[7]

But these rules, forms, and tables are to be subject to the previous approval of the Government of India or of the local government.[8]

The business of the chartered high courts is distributed among single judges and division courts in accordance with rules of court, subject to any provision which may be made by Act of the Governor-General in Council.[9]

[1] Digest, s. 96. [2] Ibid. 97. [3] Ibid. 99. [4] Ibid. 100.
[5] Printed in *Statutory Rules and Orders Revised*, vol. vi.
[6] Digest, s. 101. [7] Ibid. 102.
[8] Ibid. [9] Ibid. 103.

The Governor-General in Council may by order alter the local limits of the jurisdiction of the several chartered high courts, and authorize them to exercise jurisdiction over Christian subjects of His Majesty resident in Native States.[1]

The old enactments requiring the chartered high courts, in the exercise of their original jurisdiction with reference to certain matters of which the most important are inheritance and succession, when both parties are subject to the same law or custom, to decide according to that law or custom, and when they are subject to different laws or customs, to decide according to the law of the defendant, are still in force, subject to such modifications as have been or may be made by Indian legislation.[2]

Traces of the old conflicts between the supreme court and the governor-general's council are still to be found in enactments which exempt the governor-general, the governors of Bengal, Madras, and Bombay, and the members of their respective councils, from the original jurisdiction of the chartered high courts in respect of anything counselled, ordered, or done by any of them in their public capacity, from liability to arrest or imprisonment in any civil proceeding in a high court, and from being subject to the criminal jurisdiction of a high court in respect of any misdemeanour at common law or under any Act of Parliament.[3] Nor are the chartered high courts to exercise original jurisdiction in revenue matters.[4]

Jurisdiction of English courts over offences in India.

The highest officials in India are exempted from the jurisdiction of the Indian chartered high courts, but, under enactments which are still in force,[5] certain offences by persons holding office under the Crown in India are expressly made punishable as misdemeanours by the High Court in England. These offences are :

(1) Oppression of any of His Majesty's subjects ;

(2) Wilful breach or neglect of the orders of the Secretary of State ;

[1] Digest, s. 104. [2] Ibid. 108. [3] Ibid. 105.
[4] Ibid. 101. [5] Ibid. 117.

(3) Wilful breach of the trust and duty of office;

(4) Trading; and

(5) Receipt of presents.

Under an Act of 1797 (37 Geo. III, c. 142, s. 28) any British subject[1] who, without the previous consent in writing of the Secretary of State in Council, or of the Governor-General in Council, or of a local Government, is concerned in any loan to a native prince, is guilty of a misdemeanour.

Any of these offences may be tried and punished in England, but the prosecution must be commenced within five years after the commission of the offence or the arrival in the United Kingdom of the person charged, whichever is later.[2]

The army in India.

Supreme authority over the army in India is vested by law in the Governor-General in Council.[3] Under the arrangements made in 1905, as modified in 1909, the commander-in-chief of His Majesty's Forces in India has charge of the Army Department, which to a certain extent corresponds to the War Office in England. Subject to the administrative control of the Governor-General in Council, the same commander-in-chief is also the chief executive officer of the army. Under the system in force before the changes introduced by the Act of 1893 he held special command of the troops in the Bengal Presidency, and exercised a general control over the armies of Madras and Bombay. Each of these armies had a local commander-in-chief, who might be, and in practice always was, appointed a member of the governor's executive council, and the local Government of the presidency had certain administrative powers in military matters. This system of divided control led to much inconvenience, and by an Act of 1893 (56 & 57 Vict. c. 62) the offices of the provincial commanders-in-chief were abolished, and the powers of military

[1] This probably means any European British subject. See Digest, s. 118.

[2] This is the period fixed by 21 Geo. III, c. 70, s. 7. But the period under 33 Geo. III, c. 52, s. 141, is six years from the commission of the offence and a shorter period is fixed by the general Act, 56 & 57 Vict. c. 61. See Digest, s. 119.

[3] See ibid. 36.

control vested in the Governments of Madras and Bombay were transferred to the Government of India.

The administrative arrangements under the Act of 1893 came into force on April 1, 1895. The Army of India was then divided into four great commands, each under a lieutenant-general, the whole being under the direct command of the commander-in-chief in India and the control of the Government of India. In 1904 one of the commands was abolished, and the army was organized in three commands and two independent divisions. In June, 1907, the three commands ceased to exist, and the Army in India was divided into two portions, viz. a Northern Army and a Southern Army, each under the command of a General Officer. The Northern Army comprises the Peshawar, Rawal Pindi, Lahore, Meerut, and Lucknow Divisions with the Kohat, Bannu, and Derajat independent Frontier Brigades; while the Southern Army comprises the Quetta, Mhow, Poona, Secunderabad, and Burma Divisions, together with the Aden garrison.

The army in India consists, first, of His Majesty's British forces, which are under the (imperial) Army Act, and, secondly, of native troops, of which the British officers are under the (imperial) Army Act, whilst the remainder are under the Indian Army Act, an Act of the Indian Legislature.[1] In 1913 the total strength was nearly 263,000 men of all arms, of whom rather more than 78,000 (including the British officers of the Indian Army) were British. This is exclusive of the active reserve, in process of formation, consisting of men who have served with the colours in the Native Army from 5 to 12 years, and numbering now about 34,700 men, and of the volunteers, about 42,000 in number, enrolled under the Indian Volunteers Act (XX of 1869, as amended by X of 1896).

When the Native Army was reorganized in 1861, its British officers were formed into three 'staff corps,' one for each of the three armies of Bengal, Madras, and Bombay. The officers of the corps were, in the first instance, transferred

[1] Act VIII of 1911.

from the East India Company's army, and were subsequently drawn from British regiments. In 1891 the three staff corps were amalgamated into a single body, known as the Indian Staff Corps. In 1902 the use of the term 'Staff Corps' was abandoned, and these officers are now said to belong to the Indian Army. The number of their establishment is nearly 3,450. They are recruited partly from young officers of British regiments and batteries in India, but mainly by the appointment of candidates from the Royal Military College, Sandhurst, to an unattached list, from which they are transferred to the Indian Army after a year's duty with a British regiment in India. After passing examinations in the native language and in professional subjects, an officer of the Indian Army is eligible for staff employment or command in any part of India. The officers of the Indian Army are employed not only in the Native Army and in military appointments on the staff, but also in a large number of civil posts. They hold the majority of appointments in the Political Department, and many administrative and judicial offices in non-regulation provinces.

Ecclesiastical establishment.

The Charter Acts of 1813 and 1833 provided for the appointment of bishops at Calcutta, Madras, and Bombay, and conferred on them ecclesiastical jurisdiction and power to admit to holy orders. These provisions are still in force,[1] but the bishops who have been since appointed for other Indian dioceses, such as the diocese of Lahore, do not derive their authority from any Act of Parliament. The salaries, allowances, and leaves of absence of the Indian bishops and archdeacons are regulated by the King or by the Secretary of State in Council.[2]

Subsidiary provisions.

The provisions summarized above include all the matters relating to the administration of India which are regulated by Act of Parliament, with the exception of some minor points relating to salaries, leave of absence, temporary appointments, and the like.

[1] Digest, ss. 110–12.

[2] Ibid. 113, 114.

The salaries and allowances of the governor-general and the governors of Bengal, Madras, and Bombay, and of their respective councils, of the commander-in-chief, and of lieutenant-governors, are fixed by order of the Secretary of State in Council, subject to limits imposed by Act of Parliament.[1]

Return to Europe vacates the offices of the governor-general, of the governors of Bengal, Madras, and Bombay, and the members of their respective councils, and of the commander-in-chief,[2] except that members of council can obtain six months' leave of absence on medical certificate.[3]

There is power to make conditional appointments to the offices of governor-general, governor, and member of council.[4]

If a vacancy occurs in the office of governor-general when there is no successor or conditional successor on the spot, the Governor of Bengal, Madras, or Bombay, whichever is senior in office, fills the vacancy temporarily.[5] A temporary vacancy in the office of Governor of Bengal, Madras, or Bombay is filled by the senior member of council.[6] Provision is also made for filling temporary vacancies in the offices of ordinary or additional members of council.

Absence on sick leave or furlough of persons in the service of the Crown in India is regulated by rules made by the Secretary of State in Council.[7] The distribution of patronage between the different authorities may also be regulated in like manner.[8]

Administrative arrangements not dependent on Acts of Parliament.

The administrative arrangements which have been summarized above depend mainly, though not exclusively, on Acts of Parliament. To describe the branches of administration which depend not on Acts of Parliament, but on Indian laws or administrative regulations, would be beyond the scope of this work. For a description of them reference should be made to such authorities as Sir John Strachey's

[1] Digest, s. 80.

[2] Ibid. 82. The precise effect of the enactments reproduced by this section is far from clear.

[3] Ibid. 81. [4] Ibid. 83. [5] Ibid. 85.

[6] Ibid. 86. [7] Ibid. 89. [8] Ibid. 90.

excellent book on India,[1] or the latest of the decennial reports on the moral and material progress of India. Only a few of them can be touched on lightly here.

Financial system.

In the first place something must be said about the Indian financial system. The principal heads of Indian revenue, as shown in the figures annually laid before Parliament, are land revenue, opium, salt, stamps, excise, provincial rates, customs, assessed taxes, forest, registration, and tributes from Native States. The principal heads of expenditure are debt services, military services, collection of revenue, commercial services, famine relief and insurance, and civil service. But during recent years the services grouped as commercial, namely, post office, telegraph, railways, and irrigation, have usually shown a surplus, and have been a source of revenue and not of expenditure. The most important head of revenue is the land revenue, a charge on the land which is permanently fixed in the greater part of Bengal and in parts of Madras, and periodically settled elsewhere.

The central government keeps in its own hands the collection of certain revenues such as those of the Salt Department in Northern India, the Telegraph Department, and the revenues of Coorg, Ajmere, and the North-West Frontier Province, besides certain receipts connected with the Army and other services. It also deals directly with the expenditure on the Army and the Indian Marine, on certain military works, on railways and telegraphs, on the administration of the three small provinces whose revenue it receives, and on the mint, and with the greater part of the post office expenditure and of the political charges.[2]

The other branches of revenue are collected and the other branches of expenditure are administered by the provincial or local governments. But the whole of the income and

[1] 4th edition by Sir T. W. Holderness, 1911.

[2] On the relations between imperial and provincial finance, see the Resolution of the Government of India, published in the *Gazette of India* of May 18, 1912.

expenditure, whether collected or borne by the central or by the local government, is brought into one account as the income and expenditure of the Indian Empire.

From 1871 to 1903 the relations between central and provincial finance were regulated by quinquennial contracts between the central and each provincial government. Under these contracts the whole, or a proportion, of certain taxes and other receipts collected by each provincial government was assigned to it for meeting a prescribed portion of the administrative charges within the province. Since 1903 these quinquennial contracts have gradually been replaced by contracts on a quasi-permanent basis.

The provincial governments have thus a direct interest in the efficient collection of revenue and an inducement to be economical in expenditure, since savings effected by them are placed to their credit. But they may not alter taxation, or the rules under which the revenue is administered, without the assent of the Supreme Government. Subject to general supervision, and to rules and conditions concerning such matters as the maintenance of great lines of communication, the creation of new appointments, the alteration of scales of salaries, and the undertaking of new general services or duties, they have a free hand in administering their share of the revenue. Any balance which a provincial government can accumulate by careful administration is placed to its credit, but on occasions of extraordinary stress, as during the Afghan War, the central government has sometimes called upon local governments to surrender a share of their balances.

Administrative staff of local governments.

As has been said above, the governors of Bengal, Madras, and Bombay are assisted by executive councils. A lieutenant-governor has, as a rule, no executive council,[1] but has the help of a Board of Revenue in the United Provinces, and of a

[1] Under the Indian Councils Act, 1909, there is power to create executive councils for lieutenant governors and such a council has been established for Bihar and Orissa.

Financial Commissioner in the Punjab and Burma. Madras has also a Board of Revenue. Bengal has at present a Board of Revenue reduced to a single member, and a similar arrangement has been made for Bihar and Orissa. Each province has its secretariat, manned according to administrative requirements, and also special departments, presided over by heads, such as the inspector-general of police, the commissioner of excise, the director of public instruction, the inspector-general of civil hospitals, the sanitary commissioner, and the chief engineer of public works, for the control of matters which are under provincial, as distinguished from central management. There may be also special officers in charge of such matters as experimental farms, botanical gardens, horse-breeding, and the like, which require special qualifications but do not need a large staff.

Regulation and non-regulation provinces.

The old distinction between regulation and non-regulation provinces[1] has become obsolete, but traces of it remain in the nomenclature of the staff, and in the qualifications for administrative posts. The corresponding distinction in modern practice is between the regions which are under ordinary law, and the more backward regions, known as scheduled districts, which are under regulations made in exercise of the summary powers conferred by the Government of India Act, 1870 (33 Vict. c. 3).[2]

The district.

In each province the most important administrative unit is the district. There are 267 districts in British India. They vary considerably in area and population, from the Simla district in the Punjab with 101 square miles to the Upper Khyndwin in Burma with approximately 19,000 square miles, and from the hill district of North Arakan with a population of 20,680 to Maimansingh with a population of 3,915,000. In the United Provinces the district has an average area of 1,500 or 2,000 square miles, with

[1] See above, pp. 101, 102.

[2] See above, p. 105, and East India (Progress and Condition) Decennial Report (1913), p. 62.

a population of 750,000 to 1,500,000. But in several provinces, and especially in Madras, the district is much larger.

The district magistrate and his staff.

At the head of the district is the district magistrate, who in the old regulation provinces is styled the collector and elsewhere the deputy commissioner. He is the local representative of the Government and his position corresponds more nearly to that of the French *préfet* than to that of any English functionary.[1]

He has assistants and deputies varying in number, title, and rank, and his district is subdivided for administrative purposes into charges which bear different names in different parts of the country.

In most parts of India, but not in Madras, districts are grouped into divisions, under commissioners, who stand between the district magistrate and his local government.

If the district is, *par excellence*, the administrative unit of the Indian country, the village may be said to be the natural unit. It answers, very roughly, to the English civil parish or the continental *commune*, and it is employed as the unit for revenue and police purposes. Its organization differs much in different parts of India, but it tends to be a self-sufficing community of agriculturists. It has its headman, who in some provinces holds small police powers; its accountant, who keeps the record of the State dues and maintains the revenue and rent rolls of the village; and its watchman and other menials. In Bengal the village system is less developed than elsewhere.

Municipal and district councils.

Under various Acts of the central and local Indian legislatures municipal and district councils have been established in the several provinces of India with limited powers of local taxation and administration. This system of local government received a considerable extension under the viceroyalty of Lord Ripon.[2]

[1] See Strachey, 392. East India (Progress and Condition) Decennial Report (1913), p. 63.

[2] See Government of India Acts I, XIV, XV, and XX of 1883, XIII and

Judicial arrangements.

Reference has been made above to the four chartered high courts. But the term 'high court', as used in Indian legislation,[1] includes also the chief courts of those parts of British India which are outside the jurisdiction of the chartered high courts. These are the chief court of the Punjab, established in 1866, the chief court of Lower Burma, established in 1900, and the courts of the judicial commissioners for Oudh, the Central Provinces, Upper Burma, Berar and Sind. The Punjab chief court has at present eight judges, the Lower Burma chief court five. The provinces of Bihar and Orissa and of Assam are under the jurisdiction of the Calcutta high court.

These non-chartered high courts exercise with respect to the courts subordinate to them the like appellate jurisdiction, and the like powers of revision and supervision, as are exercised by the chartered courts, and their decisions are subject to the like appeal to the judicial committee of the Privy Council.

Civil jurisdiction.

The procedure of the several civil courts is regulated by the general Code of Civil Procedure, but their nomenclature, classification, and jurisdiction depend on Acts passed for the different provinces. There is usually a district judge for a district or group of districts, whose court is the chief civil tribunal for the district or group, and who usually exercises criminal jurisdiction also as a sessions judge. There are subordinate judges with lesser jurisdiction, and below them there are the courts of the munsif, or of some petty judge with a similar title. The right of appeal from these courts is regulated by the special Act, and by the provisions of s. 100 of the Code of Civil Procedure (Act V of 1908) as to second appeals. In the presidency towns, and in some other places, there are also small cause courts exercising final jurisdiction in petty cases.

XVII of 1884; Bengal Act III of 1884; Bombay Acts I and II of 1884; Madras Acts IV and V of 1884. Some of these Acts have since been repealed and re-enacted.

[1] See s. 3 (24) of the Indian General Clauses Act (X of 1897).

Criminal jurisdiction.

The constitution, jurisdiction, and procedure of criminal courts are regulated by the Code of Criminal Procedure, which was last re-enacted in 1898 (Act V of 1898). In every province, besides the high court, there is a court of sessions for each sessional division, which consists of a district or group of districts. The judge of the court of sessions also, as has been seen, usually exercises civil jurisdiction as district judge. There may be additional, joint, and assistant sessions judges. There are magistrates of three classes, first, second, and third. For each district outside the presidency towns there is a magistrate of the first class called the district magistrate, with subordinate magistrates under him. For the three presidency towns there are special presidency magistrates, and the sessions divisions arrangements do not apply to these towns.

A high court may pass any sentence authorized by law. A sessions judge may pass any sentence authorized by law, but sentences of death must be confirmed by the high court. Trials before the high court are by a jury of nine. Trials before a court of sessions are either by a jury or with assessors according to orders of the local Government.

Presidency magistrates and magistrates of the first class can pass sentences of imprisonment up to two years, and of fine up to 1,000 rupees. They can also commit for trial to the court of sessions or high court.

Magistrates of the second class can pass sentences of imprisonment up to six months and of fine up to 200 rupees.

Magistrates of the third class can pass sentences of imprisonment up to one month and of fine up to fifty rupees.

In certain parts of British India the local Government can, under s. 30 of the Code of Criminal Procedure, invest magistrates of the first class with power to try all offences not punishable with death.

In certain cases and under certain restrictions magistrates of the first class, or, if specially so empowered, magistrates of the second class, can pass sentences of whipping.

A judge or magistrate cannot try a European British subject unless he is a justice of the peace. High court judges, sessions judges, district magistrates, and presidency magistrates are justices of the peace *ex officio*. In other cases a justice of the peace must be a European British subject. If a European British subject is brought for trial before a magistrate he may claim to be tried by a mixed jury.

The Native States.

India, as defined by the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 18), and by the Indian General Clauses Act (X of 1897, s. 3 (27)), includes not only the territories comprised in British India, that is to say, the territories under the direct sovereignty of the Crown, but also the territories of the dependent Native States. These are upwards of 600 in number. They cover an area of nearly 700,000 square miles, and contain a population of about 62,500,000. Their total revenues are estimated at nearly Rx. 20,000,000.[1] They differ from each other enormously in magnitude and importance. The Nizam of Hyderabad rules over an area of 83,000 square miles and a population of more than 11,000,000. There are petty chiefs in Kathiawar whose territory consists of a few acres.[2]

Division of sovereignty.

The territory of these States is not British territory. Their subjects are not British subjects. The sovereignty over them is divided between the British Government and the ruler of the Native State in proportions which differ greatly according to the history and importance of the several States, and which are regulated partly by treaties or less formal engagements, partly by sanads or charters, and partly by usage. The maximum of sovereignty enjoyed by any of their rulers is represented by a prince like the Nizam of Hyderabad, who coins money, taxes his subjects, and inflicts

[1] Rx = tens of rupees.

[2] For further details as to the Native States see East India (Moral and Material Progress) Decennial Report (1913), pp. 29–49; and on the general position of these States see.—Tupper, *Our Indian Protectorate*; Lee-Warner, *Protected Princes of India*; Strachey, *India*, ch. xxiv; Westlake, *Chapters on Principles of International Law*, ch. x; and below, Chapter V.

capital punishment without appeal. The minimum of sovereignty is represented by the lord of a few acres in Kathiawar, who enjoys immunity from British taxation, and exercises some shadow of judicial authority.

General control by British Government.

But in the case of every Native State the British Government, as the paramount Power,—

(1) exercises exclusive control over the foreign relations of the State;

(2) assumes a general, but limited, responsibility for the internal peace of the State;

(3) assumes a special responsibility for the safety and welfare of British subjects resident in the State; and

(4) requires subordinate co-operation in the task of resisting foreign aggression and maintaining internal order.

Control over foreign relations.

It follows from the exclusive control exercised by the British Government over the foreign relations of Native States, that a Native State has not any international existence. It does not, as a separate unit, form a member of the family of nations. It cannot make war. It cannot enter into any treaty, engagement, or arrangement with any of its neighbours. If, for instance, it wishes to settle a question of disputed frontier, it does so, not by means of an agreement, but by means of rules or orders framed by an officer of the British Government on the application of the parties to the dispute. It cannot initiate or maintain diplomatic relations with any foreign Power in Europe, Asia, or elsewhere. It cannot send a diplomatic or consular officer to any foreign State. It cannot receive a diplomatic or consular officer from any foreign State. Any attempt by the ruler of a Native State to infringe these rules would be a breach of the duty he owes to the King-Emperor. Any attempt by a foreign Power to infringe them would be a breach of international law. Hence, if a subject of a Native State is aggrieved by the act of a foreign Power, or of a subject of a foreign Power,

redress must be sought by the British Government; and, conversely, if a subject of a foreign Power is aggrieved by the act of a Native State, or of any of its subjects, the foreign Power has no direct means of redress, but must proceed through the British Government. Consequently the British Government is in some degree responsible both for the protection of the subjects of Native States when beyond the territorial limits of those States, and for the protection of the subjects of foreign Powers when within the territorial limits of Native States. And, as a corollary from this responsibility, the British Government exercises control over the protected class of persons in each case.

The British Government has recognized its responsibility for, and asserted its control over, subjects of Native Indian States resorting to foreign countries by the Orders in Council which have been made for regulating the exercise of British jurisdiction in Zanzibar, Muscat, and elsewhere. By these orders provision has been made for the exercise of jurisdiction, not only over British subjects in the proper sense, but also over British-protected subjects, that is, persons who by reason of being subjects of princes and States in India in alliance with His Majesty, or otherwise, are entitled to British protection. And the same responsibility is recognized in more general terms by a section in the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37, s. 15), which declares that where any Order in Council made in pursuance of the Act extends to persons enjoying His Majesty's protection, that expression is to include all subjects of the several princes and States in India.

Power to maintain peace.

The consequences which flow from the duty and power of the British Government to maintain order and peace in the territories of Native States have been developed at length by Sir C. L. Tupper and Sir William Lee-Warner. The guarantee to a native ruler against the risk of being dethroned by insurrection necessarily involves a corresponding guarantee to his subjects against intolerable misgovernment. The

degree of misgovernment which should be tolerated, and the consequences which should follow from transgression of that degree, are political questions to be determined with reference to the circumstances of each case.[1]

Special responsibility for British subjects in Native States.

The special responsibility assumed by the British Government for the safety and welfare of British subjects, whether English or Indian, within the territories of Native States involves the exercise of very extensive jurisdiction within those territories. The territories of British India and of the Native States are inextricably interlaced. The territories of the Native States are intersected by British railway lines, postal lines, and telegraph lines. British subjects, European and Indian, freely and extensively resort to and reside in Native territory for purposes of trade and otherwise. For each Native State there is a British political officer, representing the civil authority exercised by the paramount power, and in each of the more important States there is a resident political officer with a staff of subordinates. Detachments of British troops occupy cantonments in all the more important military positions.

For the regulation of the rights and interests arising from this state of things an extensive judicial machinery is required. It varies in character in different places, and its powers are not everywhere based on the same legal principles. For the proper control of the railway staff it has sometimes been found necessary to obtain a formal cession of the railway lands. In other cases, a cession of jurisdiction within those lands has been considered sufficient. The jurisdiction exercised in cantonments has been sometimes based on the extra-territorial character asserted for cantonments under European international law. And a similar extra-territorial character may be considered as belonging to the residencies and other stations occupied by political officers.[2]

[1] The recent tendency to leave greater freedom of administration to the rulers of Native States is illustrated by the Mysore Treaty of 1913.

[2] See below, Chapter V.

Subordinate military co-operation.

The duty incumbent on Native States of subordinate co-operation in the task of resisting foreign aggression has been recognized and emphasized by arrangements which were made during Lord Dufferin's viceroyalty with several of these States for maintaining a number of selected troops in such a condition of efficiency as will make them fit to take the field side by side with British troops. Other States have engaged to furnish transport corps. The total number of these contingents is about 22,000 men. The officers and men are, to a great extent, natives of the State to which they belong, but they are inspected and advised by British officers.[1]

Exceptional position of Native Indian States.

The result of all these limitations on the powers of the Native Indian States is that, for purposes of international law, they occupy a very special and exceptional position. 'The principles of international law', declared a resolution of the Government of India in 1891,[2] 'have no bearing upon the relations between the Government of India as representing the Queen-Empress on the one hand, and the Native States under the sovereignty of Her Majesty on the other. The paramount supremacy of the former presupposes and implies the subordination of the latter.'

[1] Strachey, *India*, p. 493.

[2] Gazette of India, No. 1700 E, August 21, 1891.

CHAPTER III

DIGEST OF STATUTORY ENACTMENTS RELATING TO THE GOVERNMENT OF INDIA

N.B.—The marginal references in square brackets [ ] indicate the enactments reproduced.

PART I.

THE SECRETARY OF STATE IN COUNCIL.

The Crown.

Government of India by the Crown. [21 & 22 Vict. c. 106, s. 2.]

1.—British India (*a*) is governed by and in the name of His Majesty the King (*b*), and all rights which, if the Government of India Act, 1858, had not been passed, might have been exercised by the East India Company in relation to any territories, may be exercised by and in the name of His Majesty as rights incidental to the government of British India (*c*).

(*a*) The expressions 'British India' and 'India' are defined by s. 124 of this Digest, in accordance with the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 18), and the Indian General Clauses Act (X of 1897, s. 3 (7) (27)).

The language used in the Act of 1833 (3 & 4 Will. IV, c. 85, s. 1) was: 'the territories *now* in the possession and under the government of the said company.' A similar expression was used in the Indian Councils Act, 1861 (24 & 25 Vict. c. 67, s. 22). Hence questions arose as to the application of the Acts to territories subsequently acquired. Those questions have, however, now been set at rest by s. 3 of the Indian Councils Act, 1892 (55 & 56 Vict. c. 14), which expressly declares the applicability of the Acts of 1833 and 1861 to territories subsequently acquired.

(*b*) The Royal Titles Act, 1876 (39 & 40 Vict. c. 10), authorized the Queen, with a view to the recognition of the transfer of the government of India from the East India Company to the Crown, by Royal Proclamation, to make such addition to the style and titles appertaining to the Imperial Crown of the United Kingdom and its dependencies as to Her Majesty might seem meet. Accordingly the Queen, by proclamation dated April 28, 1876, added to her style and titles

the words, 'Indiae Imperatrix, or Empress of India' (London Gazette, April 28, 1876, 2667), and 'Emperor of India' forms part of the title of the present King.

(*c*) These rights include the right to acquire and cede territory. See *Lachmi Narayan* v. *Raja Pratab Singh*, I. L. R. 2 All. 1, and p. 36 above, and note (*a*) to s. 36 below.

The Secretary of State.

The Secretary of State. [21 & 22 Vict. c. 106, s. 3.]

2.—(1) Subject to the provisions embodied in this Digest, one of His Majesty's principal Secretaries of State (in this Digest referred to as 'the Secretary of State') has and performs all such or the like powers and duties in anywise relating to the government or revenues of India (*a*), and all such or the like powers over all officers appointed or continued under the Government of India Act, 1858, as, if that Act had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of that Company, either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India, in relation to that government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone (*b*).

[3 & 4 Will. IV, c. 85, s. 25.]

(2) In particular, the Secretary of State may, subject to the provisions embodied in this Digest, superintend, direct, and control all acts, operations, and concerns which in anywise relate to or concern the government or revenues of India, and all grants of salaries, gratuities, and allowances, and all other payments and charges whatever out of or on the revenues of India.

[21 & 22 Vict. c. 106, s. 3.]

(3) Any warrant or writing under His Majesty's Royal Sign Manual which, before the passing of the Government of India Act, 1858, was required by law to be countersigned by the president of the Commissioners for the Affairs of India must in lieu thereof be countersigned by the Secretary of State (*c*).

[21 & 22 Vict. c. 106, s. 6.]

(4) There are paid out of the revenues of India to the Secretary of State and to his under secretaries respectively,

the like yearly salaries as may for the time being be paid to any other Secretary of State and his under secretaries respectively (*d*).

(*a*) The term 'revenues of India' is retained here and elsewhere, though in an Act of Parliament it might now be more accurate to speak of the revenues of *British* India.

(*b*) The Secretary of State is the minister through whom the authority of the Crown over India is exercised in England, and thus corresponds roughly to the president of the Board of Control (Commissioners for the Affairs of India), under the system which prevailed before the Act of 1858. He is appointed by the delivery of the seals of office, and appoints two under secretaries, one permanent, who is a member of the Civil Service, the other parliamentary, who changes with the Government. The Act of 1858 authorized the appointment of a fifth principal Secretary of State, in addition to the four previously existing (Home, Foreign, Colonial, and War).

The office of Secretary of State is constitutionally a unit, though there are five officers. Hence any Secretary of State is capable of performing the functions of any other, and consequently it is usual and proper to confer statutory powers in general terms on 'a (or "the") Secretary of State', an expression which is defined by the Interpretation Act, 1889, as meaning one of Her Majesty's principal Secretaries of State. But in matters relating to India there are certain functions which must be exercised by the Secretary of State *in Council*. See Anson, *Law and Custom of the Constitution* (third edition), vol. ii, pt. i, 168; pt. ii, 85, 86.

(*c*) See e.g. the provisions as to removal of officers below, s. 21.

(*d*) i.e. £5,000 to the Secretary of State, £2,000 to the permanent Under Secretary, and £1,500 to the Parliamentary Under Secretary.

The Council of India.

The Council of India. [21 & 22 Vict. c. 106, ss. 7, 10, 11, 13. 32 & 33 Vict. c. 97, ss. 1, 2, 3, 6. 7 Edw. VII, c. 35.]

3.—(1) The Council of India consists of such number of members, not less than ten and not more than fourteen, as the Secretary of State may from time to time determine (*a*).

(2) The right of filling any vacancy in the Council of India is vested in the Secretary of State.

(3) Unless at the time of an appointment to fill a vacancy in the Council of India nine of the then existing members of the council are persons who have served or resided in British India (*b*) for at least ten years, and have not last left British India more than five years before the date of their appointment, the person appointed to fill the vacancy must be so qualified.

(4) Every member of the Council of India holds office, except as by this section provided, for a term of seven years (*c*).

(5) The Secretary of State may for special reasons of public advantage reappoint for a further term of five years any member of the Council of India whose term of office has expired. In any such case the reasons for the reappointment must be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament. Save as aforesaid, a member of the Council of India is not capable of reappointment.

(6) Any member of the Council of India may, by writing signed by him, resign his office. The instrument of resignation must be recorded in the minutes of the council.

(7) Any member of the Council of India may be removed by His Majesty from his office on an address of both Houses of Parliament.

(8) There is paid to each member of the Council of India out of the revenues of India the annual salary of one thousand pounds (*d*).

(*a*) The Council of India is, in a certain, but very limited, sense the successor of the old Court of Directors. Under the Act of 1858 it consisted of fifteen members, eight appointed by the Crown, and seven elected, in the first instance, by the Court of Directors, and subsequently by the council itself. The members of the council held office during good behaviour, but were removable on an address by both Houses of Parliament. By an Act of 1869 (32 & 33 Vict. c. 97) the right of filling all vacancies in the council was vested in the Secretary of State, and the tenure was changed from tenure during good behaviour to tenure for a term of ten years, with a power of reappointment for five years, 'for special reasons.' By an Act of 1889 (52 & 53 Vict. c. 65) the Secretary of State was authorized to abstain from filling vacancies in the council until the number should be reduced to ten. An Act of 1907 (7 Edw. VII, c. 35) repealed the Act of 1889 and made the provisions reproduced in subs. (1). The Act of 1907 also reduced the salary of Members of Council thereafter appointed from £1,200 to £1,000, the term of office from ten to seven years, and the period between a member's last service in India and his appointment to the council from ten to five years.

(*b*) It will be observed that service or residence in *British* India (see 21 & 22 Vict. c. 106, s. 1), not in India, is the qualification.

(*c*) For members appointed before August 28, 1907, the term of office is ten years.

(*d*) For members appointed before August 28, 1907, the salary is £1,200.

Seat in council disqualification for Parliament. [21 & 22 Vict. c. 106, s. 12.]

4. A member of the Council of India is not capable of sitting or voting in Parliament.

This restriction applies to seats in both Houses of Parliament.

Claims to compensation. [32 & 33 Vict. c. 97, s. 7.]

5. If at any time it appears to Parliament expedient to reduce the number or otherwise to deal with the constitution of the Council of India, a member of that council is not entitled to claim any compensation for the loss of his office, or for any alteration in the terms and conditions under which his office is held, unless he has served in his office for a period of ten years.

This enactment is contained in the Act of 1869 which changed the tenure of members of council. The term of office has now been reduced to seven years.

Duties of council. [21 & 22 Vict. c. 106, s. 19.]

6. The Council of India, under the direction of the Secretary of State, and subject to the provisions embodied in this Digest, conducts the business transacted in the United Kingdom in relation to the government of India and the correspondence with India.

Powers of council. [21 & 22 Vict. c. 106, s. 22.]

7.—(1) *All powers required to be exercised by the Secretary* of State in Council, and all powers of the Council of India, may be exercised at meetings of the council at which not less than five members are present.

(2) The Council of India may act notwithstanding any vacancy in their number.

President and vice-president of council. [21 & 22 Vict. c. 106, ss. 21, 22.]

8.—(1) The Secretary of State is the president of the Council of India, with power to vote.

(2) The Secretary of State in Council may appoint any member of the Council of India to be vice-president thereof, and the Secretary of State may at any time remove any person so appointed.

(3) At every meeting of the Council of India the Secretary of State, or in his absence the vice-president, if present, or in the absence of both of them, one of the members of the council, chosen by the members present at the meeting, presides.

Meetings of the council. [21 & 22 Vict. c. 106, s. 22.]

9. Meetings of the Council of India are convened and held when and as the Secretary of State directs, but one such meeting at least must be held in every week.

Procedure at meetings. [21 & 22 Vict. c. 106, s. 23.]

10.—(1) At any meeting of the Council of India at which the Secretary of State is present, if there is a difference of opinion on any question, except (*a*) a question with respect to which a majority of votes at a meeting is by this Digest declared to be necessary, the determination of the Secretary of State is final.

(2) In case of an equality of votes at any meeting of the council the person presiding at the meeting has a casting vote.

(3) All acts done at a meeting of the council in the absence of the Secretary of State require the approval in writing of the Secretary of State.

(4) In case of difference of opinion on any question decided at a meeting of the council, the Secretary of State may require that his opinion and the reasons for it be entered in the minutes of the proceedings, and any member of the council who has been present at the meeting may require that his opinion and any reasons for it that he has stated at the meeting be also entered in like manner.

(*a*) A majority of votes is necessary for decisions on the following matters:

1. Appropriation of revenues or property, s. 23.
2. Issuing securities for money, s. 28.
3. Sale or mortgage of property, s. 31.
4. Contracts, s. 32.
5. Alteration of salaries, s. 80.
6. Furlough rules, s. 89.
7. Indian appointments, s. 90.
8. Appointments of natives of India to offices reserved for India Civil Service, s. 94.
9. Provisional appointments to posts on the Governor-General's Council, s. 83, and to reserved offices, s. 95.

Committees of council. [21 & 22 Vict. c. 106, s. 20.]

11. The Secretary of State may constitute committees of the Council of India for the more convenient transaction of business, and direct what departments of business are to be under those committees respectively, and generally direct the manner in which all business of the council or committees thereof is to be transacted (*a*).

(*a*) The existing committees are Finance, Political and Secret, Military, Revenue and Statistics, Public Works, Stores, and Judicial and Public.

Orders and Dispatches.

Submission of orders, &c. to council, and record of opinions thereon. [21 & 22 Vict. c. 106, ss. 24, 25.]

12.—(1) Subject to the provisions (*a*) embodied in this Digest, every order or communication proposed to be sent to India, and every order proposed to be made in the United Kingdom by the Secretary of State under the Government of India Act, 1858, must, unless it has been submitted to a meeting of the Council of India, be deposited in the council room for the perusal of all members of the council during seven days before the sending or making thereof.

(2) Any member of the Council of India may record, in a minute-book kept for that purpose, his opinion with respect to any such order or communication, and a copy of every opinion so recorded must be sent forthwith to the Secretary of State.

(3) If the majority of the Council of India so record their opinions against any act proposed to be done, the Secretary of State must, unless he defers to the opinion of the majority, record his reasons for acting in opposition thereto.

(*a*) The qualifications relate to urgency orders under s. 13 and secret orders under s. 14.

Provision for cases of urgency. [21 & 22 Vict. c. 106, s. 26.]

13.—(1) Where it appears to the Secretary of State that the dispatch of any communication or the making of any order, not being an order for which a majority of votes at a meeting of the Council of India is by this Digest declared to be necessary (*a*), is urgently required, the communication may be sent or order made, although it has not been submitted to

a meeting of the Council of India or deposited for the perusal of the members of that council.

(2) In any such case the Secretary of State must, except as by this Digest provided (*b*), record the urgent reasons for sending the communication or making the order, and give notice thereof to every member of the council.

(*a*) See note on s. 10.

(*b*) The exception is under the next section, s. 14.

Provision as to *secret* orders and dispatches. [33 Geo. III, c. 52, ss. 19, 20. 3 & 4 Will. IV, c. 85, s. 36. 21 & 22 Vict. c. 106, s. 27.]

14.—(1) Where an order concerns the levying of war or the making of peace, or the treating or negotiating with any prince or State, or the policy to be observed with respect to any prince or State, and is not an order for which a majority of votes at a meeting of the Council of India is by this Digest declared to be necessary (*a*), and is an order which in the opinion of the Secretary of State is of a nature to require secrecy, the Secretary of State may send the order to the Governor-General in Council or to any Governor in Council or officer in India without having submitted the order to a meeting of the Council of India or deposited it for the perusal of the members of that council, and without recording or giving notice of the reasons for making the order (*b*).

[33 Geo. III, c. 52, s. 22 21 & 22 Vict. c. 106, s. 28.]

(2) Where any dispatch from the Governor-General in Council, or from a Governor in Council, concerns the government of British India, or any of the matters aforesaid, and in the judgement of the authority sending the dispatch is of a nature to require secrecy, it may be marked 'Secret' by the authority sending it; and a dispatch so marked is not to be communicated to the members of the Council of India unless the Secretary of State so directs.

(*a*) See note on s. 10.

(*b*) The Act of 1784 (24 Geo. III, sess. 2, c. 25), which constituted the Board of Control, directed that a committee of secrecy, consisting of not more than three members, should be formed out of the directors of the Company, and, when the Board of Control issued orders requiring secrecy, the committee of secrecy was to transmit the orders to India, without informing the other directors. (See above, p. 63.) These directions were reproduced by the Charter Act of 1793 (33 Geo. III, c. 52, ss. 19, 20), and by the Charter Act of 1833 (3 & 4 Will. IV, c. 85,

ss. 35, 36). The Government of India Act, 1858 (21 & 22 Vict. c. 106, s. 27), directed that orders which formerly went through the secret committee need not be communicated to the council, unless they were orders for which a majority of votes of the council was required. There are similar provisions as to dispatches *from* India. 'Secret' orders are usually communicated to the Political and Secret Committee of the council. (See above, s. 11.)

Signature and address of orders, &c [21 & 22 Vict. c. 106 s. 19.]

15.—(1) Every order or communication sent to India, and [save as expressly provided by this Digest] every order made in the United Kingdom in relation to the government of India under this Act, must be signed by the Secretary of State (*a*).

(2) Every dispatch from the Governor-General in Council or from a Governor in Council must be addressed to the Secretary of State (*b*).

(*a*) This reproduces the existing enactment, but of course applies only to official orders and communications. It is not clear to what provisions (if any) the saving refers.

(*b*) This recognizes the right of the Governments of Bengal, Madras, and Bombay to communicate directly with the Secretary of State, a right derived from a time when Madras and Bombay constituted independent presidencies together with the Presidency of Bengal, and before a general Government of India had been established.

Communication to Parliament as to orders for commencing hostilities. [21 & 22 Vict. c. 106, s. 54.]

16. When any order is sent to India directing the actual commencement of hostilities by His Majesty's forces in India, the fact of the order having been sent must, unless the order has in the meantime been revoked or suspended, be communicated to both Houses of Parliament within three months after the sending of the order, or, if Parliament is not sitting at the expiration of those three months, then within one month after the next meeting of Parliament (*a*).

(*a*) *See* also s. 24.

Correspondence by Governor-General with Secretary of State. [13 Geo. III, c. 63, s. 9.]

17. It is the duty of the Governor-General in Council to transmit to the Secretary of State constantly and diligently an exact particular of all advices or intelligence, and of all transactions and matters, coming to the knowledge of the Governor-General in Council and relating to the government, commerce, revenues, or affairs of India (*a*).

(*a*) This reproduces an enactment contained in the Regulating Act, 1773, by which Warren Hastings and his successors were directed to

correspond regularly with the Court of Directors at home, but its re-enactment would probably not be considered necessary at the present day.

Establishment of Secretary of State.

Establishment of the Secretary of State. [21 & 22 Vict. c. 106, ss. 15, 16.]

18.—(1) No addition may be made to the establishment of the Secretary of State in Council, nor to the salaries of the persons on that establishment, except by an order of His Majesty in Council, to be laid before both Houses of Parliament within fourteen days after the making thereof, or, if Parliament is not sitting, then within fourteen days after the next meeting of Parliament.

(2) The regulations made by His Majesty for examinations, certificates, probation, or other tests of fitness in relation to appointments to junior situations in the civil service apply to such appointments on the said establishment.

(3) The Secretary of State in Council may, subject to the foregoing provisions of this section, make all appointments to and promotions in the said establishment, and may remove any officer or servant belonging to the establishment (*a*).

(*a*) This is the enactment by which the staff of the India Office is regulated.

Pensions. [21 & 22 Vict. c. 106, s. 18. 1 & 2 Geo. V, c. 25, s. 1.]

19. His Majesty may by warrant under the Royal Sign Manual, countersigned by the Chancellor of the Exchequer, grant to any secretary, officer, or servant appointed on the establishment of the Secretary of State in Council such compensation, superannuation, or retiring allowance, or to his legal personal representative such gratuity, as may be granted to persons on the establishment of a Secretary of State under the laws for the time being in force concerning superannuations and other allowances to persons having held civil offices in the public service, or to personal representatives of such persons (*a*).

(*a*) This gives the staff of the India Office pensions on the civil service scale, i.e. one-sixtieth of annual salary for each year of service,

subject to certain conditions and restrictions, or, since the Superannuation Act of 1909, one-eightieth of annual salary and a lump sum in addition.

Indian Appointments.

[21 & 22 Vict. c. 106, s. 37.]

20.—(1) Except as provided by this Digest, all powers of making regulations in relation to appointments and admissions to service and other matters connected therewith, and of altering or revoking such regulations, which, if the Government of India Act, 1858, had not been passed, might have been exercised by the Court of Directors or Commissioners for the Affairs of India, may be exercised by the Secretary of State in Council.

Indian appointments. [21 & 22 Vict. c. 106, ss. 33, 35. 24 & 24 Vict. c. 100, s. 1.]

(2) Provided that in any regulations for the time being in force for the organization of the Indian Army provision must be made for the benefit of the sons of persons who have served in India in the military or civil service of the Crown or of the East India Company equally advantageous with the provisions as to military cadetships in the Indian Army which were in force before the twentieth day of August one thousand eight hundred and sixty, and the selection of such persons is to be in accordance with regulations made by the Secretary of State (*a*).

(*a*) Sections 33, 34, 35, and 36 of the Government of India Act, 1858. run as follows:

'33. All appointments to cadetships, naval and military, and all admissions to service not herein otherwise expressly provided for, shall be vested in Her Majesty; and the names of persons to be from time to time recommended for such cadetships and service shall be submitted to Her Majesty by the Secretary of State.

'34. Regulations shall be made for admitting any persons, being natural-born subjects of Her Majesty (and of such age and qualifications as may be prescribed in this behalf), who may be desirous of becoming candidates for cadetships in the engineers and in the artillery, to be examined as candidates accordingly, and for prescribing the branches of knowledge in which such candidates shall be examined, and generally for regulating and conducting such examinations.

'35. Not less than one-tenth of the whole number of persons to be recommended in any year for military cadetships (other than cadetships in the engineers and artillery) shall be selected according to such regulations as the Secretary of State in Council may from time to time

make in this behalf from among the sons of persons who have served in India in the military or civil service of Her Majesty, or of the East India Company.

'36. Except as aforesaid, all persons to be recommended for military cadetships shall be nominated by the Secretary of State and members of council, so that out of seventeen nominations the Secretary of State shall have two, and each member of council shall have one; but no person so nominated shall be recommended unless the nomination be approved of by the Secretary of State in Council.'

When the Government of India Act, 1858, passed, and for some years afterwards, the Indian Army (taking European and Native together) was officered in two ways. A certain number of cadets were appointed to Addiscombe, and thence, according to their success in passing the college examination, went to India in the engineers, artillery, or infantry. Others received direct cadetships, and went to India without previous training. The Act speaks of both classes alike as receiving cadetships. But the artillery and engineers were not in practice taken into account in calculating the one-tenth under s. 35. This being so, the effect of s. 35 was, roughly speaking, that one-tenth of the officers appointed to the Indian Army (exclusive of the engineers and artillery) must be the sons of Indian servants.

The Act of 1860 (23 & 24 Vict. c. 100), which abolished the European Army, and which was passed on August 20, 1860, provided that 'the same or equal provision for the sons of persons who have served in India shall be maintained in any plan for the reorganization of the Indian Army.' The mode of appointment to the Native Army was meantime altered. In pursuance of this provision, an order was issued in 1862, under which the Secretary of State makes appointments to cadetships at Sandhurst, fixed at twenty annually, limited to the sons of Indian servants. The expenses of these cadets are borne by India, if their pecuniary circumstances are such as to justify the payment. Regulations as contemplated by s. 35 of the Government of India Act, 1858, have been made governing the selection, and are rigidly followed. These cadetships differ from the old ones in that they are not directly and necessarily connected with the Indian Army, for a cadet might pass from Sandhurst into the British Army and not into the staff corps. But the object is, of course, to supply the Indian Army. The word 'cadet' in the Government of India Act has no express limitation, and the present cadets appear to fall within the meaning of the term. In practice, appointments of cadets do not now go to the King.

Section 34 appears to be spent, and s. 36 to be virtually repealed by the abolition of the Indian Army. The effect of the other two sections, so far as they are in force, is reproduced in the Digest.

Powers of Crown and Secretary of State as to removal

21.—(1) His Majesty may, by writing under the Royal Sign Manual, countersigned by the Secretary of State, remove or dismiss any person holding office under the Crown in India.

of officers. [33 Geo. III, c. 52, ss. 35, 36. 3 & 4 Will. IV, c. 85, ss. 74, 75. 21 & 22 Vict. c. 106, s. 38.]

(2) A copy of any writing under the Royal Sign Manual removing or dismissing any such person must, within eight days after the signature thereof, be communicated to the Secretary of State in Council.

(3) Nothing in this enactment affects [any of His Majesty's powers over any officer in the army, or] the power of the Secretary of State [or of any authority in India] to remove or dismiss any such person.

This is an attempt to reproduce the net result of a series of enactments, which are still in the statute book, but the earlier of which were intended to give the Crown power over servants of the East India Company, and, therefore, are not wholly applicable to existing circumstances. The saving words in square brackets do not reproduce any existing enactment, but represent the effect of the law.

The Charter Act of 1793 (33 Geo. III, c. 52) enacted (ss. 35, 36) that:

'35. It shall and may be lawful to and for the King's Majesty, his heirs and successors, by any writing or instrument under his or their sign manual, countersigned by the president of the Board of Commissioners for the Affairs of India, to remove or recall any person or persons holding any office, employment, or commission, civil or military, under the said united Company in India for the time being, and to vacate and make void all or every or any appointment or appointments, commission or commissions, of any person or persons to any such offices or employments; and that all and every the powers and authorities of the respective persons so removed, recalled, or whose appointment or commission shall be vacated, shall cease or determine at or from such respective time or times as in the said writing or writings shall be expressed and specified in that behalf: Provided always, that a duplicate or copy of every such writing or instrument under His Majesty's sign manual, attested by the said president for the time being, shall, within eight days after the same shall be signed by His Majesty, his heirs or successors, be transmitted or delivered to the chairman or deputy chairman for the time being of the said Company, to the intent that the Court of Directors of the said Company may be apprised thereof.

'36. Provided always, . . . that nothing in this Act contained shall extend or be construed to preclude or take away the power of the Court of Directors of the said Company from removing or recalling any of the officers or servants of the said Company, but that the said court shall and may at all times have full liberty to remove, recall, or dismiss any of such officers or servants at their will and pleasure, in the like manner as if this Act had not been made, any governor-general, governor, or commander-in-chief appointed by His Majesty, his heirs or successors, through the default of appointment by the said Court

of Directors, always excepted, anything herein contained to the contrary notwithstanding.'

The Charter Act of 1833 (3 & 4 Will. IV, c. 85, ss. 74, 75) enacted that:

'74. It shall be lawful for His Majesty by any writing under his sign manual, countersigned by the president of the said Board of Commissioners, to remove or dismiss any person holding any office, employment, or commission, civil or military, under the said Company in India, and to vacate any appointment or commission of any person to any such office or employment.

'75. Provided always, that nothing in this Act contained shall take away the power of the said Court of Directors to remove or dismiss any of the officers or servants of the said Company, but that the said court shall and may at all times have full liberty to remove or dismiss any of such officers or servants at their will and pleasure.'

And finally the Government of India Act, 1858 (21 & 22 Vict. c. 106, s. 38), enacts that:

'Any writing under the Royal Sign Manual, removing or dismissing any person holding any office, employment, or commission, civil or military, in India, of which, if this Act had not been passed, a copy would have been required to be transmitted or delivered within eight days after being signed by Her Majesty to the chairman or deputy chairman of the Court of Directors, shall in lieu thereof be communicated within the time aforesaid to the Secretary of State in Council.'

The countersignature of the Secretary of State was substituted for the countersignature of the president of the Board of Control by the Government of India Act, 1858. (See above, s. 2.)

The tenure of persons serving under the Government of India, or under a local Government, is presumably tenure during the pleasure of the Crown. In the case of *Grant* v. *The Secretary of State for India in Council*, L. R. 2 C. P. D. 455 (1877), the plaintiff, formerly an officer in the East India Company's service, appointed in 1840, and subsequently continuing in the Indian Army when the Indian military and naval forces were transferred to the Crown, brought an action against the defendant for damages for being compulsorily placed by the Government upon the pension list, and so compelled to retire from the army. It was held on demurrer that the claim disclosed no cause of action, because the Crown acting by the defendant had a general power of dismissing a military officer at its will and pleasure, and that the defendant could make no contract with a military officer in derogation of this power. In the case of *Shenton* v. *Smith* (1895), A. C. 229, which was an appeal from the Supreme Court of Western Australia, it was held that a Colonial Government is on the same footing as the Home Government with respect to the employment and dismissal of servants of the Crown, and that these, in the absence of special contract, hold their offices during the pleasure of the Crown. The respondent in that case, having been gazetted without any special contract to act temporarily as medical officer during the absence on leave of the actual

holder of the office, was dismissed by the Government before the leave had expired. It was held that he had no cause of action against the Government. In the case of *Dunn* v. *The Queen* (1896), 1 Q. B. 116, it was held that servants of the Crown, civil as well as military, except in special cases where it is otherwise provided by law, hold their offices only during the pleasure of the Crown. In this case a petition of right had been presented, and the case set up by the suppliant was that Sir Claude McDonald, Her Majesty's Commissioner and Consul-General for the Niger Protectorate in Africa, acting on behalf of the Crown, had engaged him in the service of the Crown as consular agent in that region for a period of three years certain, and he claimed damages for having been dismissed before the expiration of that period. It appeared that Sir Claude McDonald himself held office only during the pleasure of the Crown. Mr. Justice Day held that contracts for the service of the Crown were determinable at the pleasure of the Crown, and therefore directed a verdict and judgement for the Crown. The decision was upheld by the Court of Appeal. Subsequently Mr. Dunn brought an action against Sir Claude McDonald, presumably for breach of contract, but the action was dismissed, and the doctrine that an agent who makes a contract on behalf of his principal is liable to the other contracting party for a breach of an implied warrant of his authority to enter into the contract was held inapplicable to a contract made by a public servant acting on behalf of the Crown. *Dunn* v. *McDonald* (1897), 1 Q. B. 401, 555. See *Jehangir* v. *S. of S. for India*, I. L. R. 27 Bom. 189; *Voss* v. *S. of S. for India*, I. L. R. 33 Cal. 669.

It is the practice for the Secretary of State in Council to make a formal contract with persons appointed in England to various branches of the Government service in India, e.g. education officers, forest officers, men in the Geological Survey, and mechanics and artificers on railways and other works, and many of these contracts contain an agreement to keep the men in the service for a term certain, subject to a right of dismissal for particular causes. Whether and how far the principles laid down in the cases of *Shenton* v. *Smith* and *Dunn* v. *The Queen* apply to these contracts, is a question which in the present state of the authorities cannot be considered free from doubt.

Tenure during pleasure is the ordinary tenure of public servants in England, including those who belong to the 'permanent civil service,' and the service of a member of the Civil Service of India is expressly declared by his covenant to continue during the pleasure of His Majesty. Tenure during good behaviour is, subject to a few exceptions (e.g. the auditor of Indian accounts: see below, s. 30), confined to persons holding judicial offices. But judges of the Indian high courts are expressly declared by statute to hold during pleasure: see below, s. 97. The difference between the two forms of tenure is that a person holding during good behaviour cannot be removed from his office except for such misconduct as would, in the opinion of a court of justice, justify his removal; whilst a person holding during pleasure

can be removed without any reason for his removal being assigned. See Anson, *Law and Custom of the Constitution* (third edition), vol. ii. pt. ii. pp. 221 foll. See also *Willis* v. *Gipps*, 6 State Trials, N. S. 311 (1846), as to removal of judicial officers.

PART II.

Revenues of India.

Application of revenues. [16 & 17 Vict. c. 95, s. 27. 21 & 22 Vict. c. 106, ss. 2, 42. 1 & 2 Geo. V, c. 18, s. 4. 21 & 22 Vict. c. 106]

22.—(1) The revenues of India are received for and in the name of His Majesty, and may, subject to the provisions embodied in this Digest (*a*), be applied for the purposes of the government of India alone.

(2) There are to be charged on the revenues of India alone—

(*a*) all the debts of the East India Company; and

(*b*) all sums of money, costs, charges, and expenses which, if the Government of India Act, 1858, had not been passed, would have been payable by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants, or liabilities existing at the commencement of that Act; and

(*c*) all expenses, debts, and liabilities lawfully contracted and incurred on account of the government of India (*b*); and

(*d*) all payments under the Government of India Act, 1858.

(3) For the purposes of this Digest the revenues of India include—

(*a*) all the territorial and other revenues of or arising in British India; and

(*b*) all tributes and other payments in respect of any territories which would have been receivable by or in the name of the East India Company if the Government of India Act, 1858, had not been passed; and

(*c*) all fines and penalties incurred by the sentence or order of any court of justice in British India, and all forfeitures

for crimes of any movable or immovable property (*b*) in British India ; and

(*d*) all movable or immovable property (*c*) in British India escheating or lapsing for want of an heir or successor (*d*), and all property in British India devolving as *bona vacantia* for want of a rightful owner.

(4) All other money vested in, or arising or accruing from property or rights vested in, His Majesty under the Government of India Act, 1858, or to be received or disposed of by the Secretary of State in Council under that Act, must be applied in aid of the revenues of India.

(*a*) The qualification refers to s. 34, under which there is power to dispose of escheated property.

(*b*) See *Shivabhajan* v. *Secretary of State for India*, I. L. R. 28 Bom. 314, 321.

(*c*) The expression in the Act is 'real or personal estate,' but 'movable or immovable property' is more intelligible in India, where the terms are defined by the General Clauses Act (X of 1897, s. 3 (25), (34)).

(*d*) As to the circumstances under which property in India may escheat or lapse to the Crown, see *Collector of Masulipatam* v. *Cavaly Vencata Narrainapah*, 8 Moore Ind. App. 500; and *Ranee Sonet Kowar* v. *Mirza Humut Bahadoor*, L. R. 3 I. A. 92.

Control of Secretary of State over expenditure of revenues. [21 & 22 Vict. c. 106, s. 41.]

23. The expenditure of the revenues of India, both in India and elsewhere, is subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of those revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, may be made without the concurrence of a majority of votes at a meeting of the Council of India.

This section of the Act of 1858 has given rise to questions as to the relations between the Secretary of State and his council, and between the Secretary of State in Council and the Government of India.

On the first question there was an important debate in the House of Lords on April 29, 1869 (Hansard, 195, pp. 1821–46), in which the Marquis of Salisbury and the Duke of Argyll took part, and which was made remarkable by a difference of opinion between high legal authorities on the construction of this section, one view, the stricter, being maintained by Lord Cairns and Lord Chelmsford, and a different view by the then Lord Chancellor, Lord Hatherley. The discussion

showed that whilst the object, and to some extent the effect, of this section was to impose a constitutional restraint on the powers of the Secretary of State with respect to the expenditure of money, yet this restraint could not be effectively asserted in all cases, especially where Imperial questions were involved. For instance, the power to make war necessarily involves expenditure of revenues, but is a power for the exercise of which the concurrence of a majority of votes at a meeting of the council cannot be made a necessary condition. The Secretary of State is a member of the Cabinet, and in Cabinet questions the decision of the Cabinet must prevail.

As to the second point, questions have been raised as to the powers of the Indian Legislature to appropriate by Indian Acts to specific objects, provincial or Imperial, sources of income, such as ferry fees and other tolls, process fees, rates on land, licence taxes, and income taxes. But a strict view of the enactment in the Act of 1858 would be inconsistent with the general course of Indian legislation, and would give rise to inconveniences in practice.

Restriction on application of revenues to military operations beyond the frontier. [21 & 22 Vict. c. 106, s. 55.]

24. Except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India are not, without the consent of both Houses of Parliament, applicable to defraying the expenses of any military operation carried on beyond the external frontiers of those possessions by His Majesty's forces charged upon those revenues.

As to the object and effect of this enactment, and in particular as to whether it requires the consent of Parliament to be obtained before war is commenced, see Hansard, 151, July 19, 23, 1858 (Debates on passing of Government of India Act); Hansard, 240, May 20, 21, 23, 1878 (Employment of Indian Troops in Malta); Hansard, 243, December 16, 17, 1878 (Afghan War); Hansard, 272, 273, July 27, 31, 1882 (Egypt); Hansard, 295, March 5, 9, 16, 1885 (Soudan); Hansard, 302, pp. 322–47, January 25, 1886 (Annexation of Upper Burma); July 6, 1896 (Soudan); April 13, 1904 (Tibet); Correspondence as to incidence of cost of Indian troops when employed out of India, 1896 (C. 8131); Anson, *Law and Custom of the Constitution*, vol. ii. part ii. p. 174 (third edition). See also s. 16 of this Digest.

Accounts of Secretary of State with Bank. [21 & 22 Vict. c. 106, ss. 43, 45. 22 & 23 Vict. c. 41, s. 3.

25.—(1) Such parts of the revenues of India as are remitted to the United Kingdom, and all money arising or accruing in the United Kingdom from any property or rights vested in His Majesty for the purposes of the government of India, or from the sale or disposal thereof, must be paid to the Secretary of State in Council, to be applied for the purposes of the Government of India Act, 1858.

26 & 27 Vict. c. 73, s. 16.]

(2) All such revenues and money must be paid into the Bank of England to the credit of an account entitled 'The Account of the Secretary of State in Council of India.'

(3) The money placed to the credit of this account is paid out on drafts or orders, either signed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries or his assistant under secretary or signed by the accountant-general on the establishment of the Secretary of State in Council or by one of the two senior clerks in the department of that accountant-general and countersigned in such manner as the Secretary of State in Council directs and any draft or order so signed and countersigned effectually discharges the Bank of England for all money paid thereon.

(4) The Secretary of State in Council may for the payment of current demands keep at the Bank of England such accounts as he deems expedient, and every such account is to be kept in such name and be drawn upon by such person and in such manner as the Secretary of State in Council directs.

(5) There are raised in the books of the Bank of England such accounts as may be necessary in respect of stock vested in the Secretary of State in Council, and any such account is entitled 'The Stock Account of the Secretary of State in Council of India.'

(6) Every account referred to in this section is a public account (*a*).

(*a*) This section represents the provisions of the Government of India Act, 1858, as modified by 22 & 23 Vict. c. 41, s. 3, and 26 & 27 Vict. c. 73, s. 16, and by existing practice.

Powers of attorney for sale or purchase of stock and receipt of dividends. [21 & 22 Vict. c. 106, s. 47. 26 & 27 Vict. c. 73, s 16.]

26. The Secretary of State in Council, by power of attorney executed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries, or his assistant under secretary, may authorize all or any of the cashiers of the Bank of England—

(*a*) to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council; and

(*b*) to purchase and accept stock on any such account; and

(*c*) to receive dividends on any stock standing to any such account;

and by any writing signed by two members of the Council of India and countersigned as aforesaid may direct the application of the money to be received in respect of any such sale or dividend.

Provided that stock may not be purchased or sold and transferred under the authority of any such general power of attorney, except on an order in writing directed to the chief cashier and chief accountant of the Bank of England, and signed and countersigned as aforesaid.

Provision as to securities. [21 & 22 Vict. c. 106, s. 48. 26 & 27 Vict. c. 73, s. 16.]

27. All securities held by or lodged with the Bank of England in trust for or on account or on behalf of the Secretary of State in Council may be disposed of, and the proceeds thereof may be applied, as may be authorized by order in writing signed by two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries, or his assistant under secretary, and directed to the chief cashier and chief accountant of the Bank of England.

Exercise of borrowing powers. [21 & 22 Vict. c. 106, s. 49. 26 & 27 Vict. c. 73, s. 16. 56 & 56 Vict. c. 70. s. 5.]

28.—(1) All powers of issuing securities for money in the United Kingdom which are for the time being vested in the Secretary of State in Council must be exercised by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(2) Such securities, other than debentures and bills, as might have been issued under the seal of the East India Company must be issued under the hands of two members of the Council of India and countersigned by the Secretary of State or one of his under secretaries, or his assistant under secretary.

(3) All debentures and bills issued by the Secretary of State in Council must bear the name of one of the under secretaries for India for the time being, and that name may

be impressed or affixed by machinery or otherwise in such manner as the Secretary of State in Council directs.

The provisions of this section are probably spent. The enactments authorizing the Secretary of State to borrow under special Acts, or for special purposes, such as railways, are not reproduced.

Accounts to be annually laid before Parliament. [21 & 22 Vict. c. 106, s. 53.]

29.—(1) (*a*) The Secretary of State in Council must, within the first fourteen days during which Parliament is sitting next after the first day of May in every year, lay before both Houses of Parliament—

(*a*) An account for the financial year preceding that last completed of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof, in each of the several provinces; and of all the annual receipts and disbursements at home and abroad for the purposes of the government of India, distinguishing the same under the respective heads thereof:

(*b*) The latest estimate of the same for the last financial year:

(*c*) The amount of the debts chargeable on the revenues of India, with the rates of interest they respectively carry, and the annual amount of that interest:

(*d*) An account of the state of the effects and credits in each province, and in England or elsewhere, applicable to the purposes of the government of India, according to the latest advices which have been received thereof: and

(*e*) A list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof.

(2) If any new or increased salary or pension of fifty pounds a year or upwards has been granted or created within any year in respect of the said establishment (*b*), the particulars thereof must be specially stated and explained at the foot of the account for that year.

(3) The account must be accompanied by a statement prepared from detailed reports from each province in such form as best exhibits the moral and material progress and condition of India (*c*).

(*a*) At some time or other during the session of Parliament, usually towards the end, the House of Commons goes into committee on the East India Revenue Accounts, and the Secretary of State for India or his representative in the House of Commons, on the motion to go *into committee, makes a statement in explanation of the accounts of* the government of India. The debate which takes place on this statement is commonly described as the Indian Budget Debate. The resolution in committee is purely formal.

(*b*) The words 'in respect of the said establishment' represent the construction placed in practice on the enactment reproduced by this section.

(*c*) This is the annual 'moral and material progress report.' A special report is published at the expiration of each period of ten years, giving a very full and interesting account of the general condition of India at that date. The last of these decennial reports was in 1913.

Audit of Indian accounts in United Kingdom. [21 & 22 Vict. c. 106, s. 52. 44 & 45 Vict. c. 63, s. 1.]

30.—(1) (*a*) His Majesty may, by warrant under His Royal Sign Manual, countersigned by the Chancellor of the Exchequer, appoint a fit person to be auditor of the accounts of the Secretary of State in Council, and authorize that auditor to appoint and remove such assistants as may be specified in the warrant.

(2) The auditor examines and audits the accounts of the receipt, expenditure, and disposal in the United Kingdom of all money, stores, and property applicable for the purposes of the Government of India Act, 1858.

(3) The Secretary of State in Council must by the officers and servants of his establishment produce and lay before the auditor all such accounts, accompanied by proper vouchers for their support, and must submit to his inspection all books, papers, and writings having relation thereto.

(4) The auditor has power to examine all such officers and servants in the United Kingdom as he thinks fit in relation to such accounts, and the receipt, expenditure, or disposal

of such money, stores, and property, and for that purpose, by writing under his hand, to summon before him any such officer or servant.

(5) The auditor must report to the Secretary of State in Council his approval or disapproval of the accounts aforesaid, with such remarks and observations in relation thereto as he thinks fit, specially noting any case, if such there be, in which it appears to him that any money arising out of the revenues of India has been appropriated to other purposes than those to which they are applicable.

(6) The auditor must specify in detail in his reports all sums of money, stores, and property which ought to be accounted for, and are not brought into account or have not been appropriated, in conformity with the provisions of the law, or which have been expended or disposed of without due authority, and must also specify any defects, inaccuracies, or irregularities which may appear in the accounts, or in the authorities, vouchers, or documents having relation thereto.

(7) The auditor must lay all such reports before both Houses of Parliament, with the accounts of the year to which the reports relate.

(8) The auditor holds office during good behaviour.

(9) There are paid to the auditor and his assistants, out of the revenues of India, such salaries as His Majesty by warrant, signed and countersigned as aforesaid, may direct.

(10) The auditor and his assistants are, for the purposes of superannuation allowance, in the same position as if they were on the establishment of the Secretary of State in Council.

(*a*) The duties of the India Office auditor as to Indian revenues and expenditure correspond in some respects to the duties of the comptroller and auditor-general with respect to the revenues of the United Kingdom. But the reports of the India Office auditor are not referred to the Public Accounts Committee of the House of Commons. As to the comptroller and auditor-general, see Anson, *Law and Custom of the Constitution* (third ed.), vol. ii. part ii.

PART III.

PROPERTY, CONTRACTS, AND LIABILITIES.

Power of Secretary of State to sell, mortgage, and buy property. [21 & 22 Vict. c. 106, s. 40.]

31.—(1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, sell and dispose of any property for the time being vested in His Majesty for the purposes of the government of India, and raise money on any such property by way of mortgage and make the proper assurances for any of those purposes, and purchase and acquire any property.

(2) All property acquired in pursuance of this section vests in His Majesty for the service of the government of India.

(3) Any assurance relating to real estate made by the authority of the Secretary of State in Council may be made under the hands and seals of three members of the Council of India.

Contracts of Secretary of State. [21 & 22 Vict. c. 106, s. 40. 22 & 23 Vict. c. 41, s. 5. 3 Edw. VII, c. 11.]

32.—(1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make any contract for the purposes of the Government of India Act, 1858.

(2) Any contract so made may be expressed to be made by the Secretary of State in Council.

(3) Any contract so made which, if it were made between private persons, would be by law required to be under seal, may be made, varied, or discharged under the hands and seals of two members of the Council of India.

(4) Any contract so made which, if it were made between private persons, would be by law required to be signed by the party to be charged therewith, may be made, varied, or discharged under the hands of two members of the Council of India.

(5) Provided that any contract for or relating to the manufacture, sale, purchase, or supply of goods, or for or relating to affreightment or the carriage of goods, or to insurance, may,

subject to such rules and restrictions as the Secretary of State in Council prescribes, be made and signed on behalf of the Secretary of State in Council by any person upon his permanent establishment, duly empowered by the Secretary of State in Council in this behalf. Contracts so made and signed are as valid and effectual as if made as prescribed by the foregoing provisions of this section. Particulars of all contracts so made as aforesaid must be laid before the Secretary of State in Council in such manner and form and within such times as the Secretary of State in Council prescribes.

(6) The benefit and liability of every contract made in pursuance of this section passes to the Secretary of State in Council for the time being.

Power to execute assurances, &c., in India. [22 & 23 Vict. c. 41 ss. 1, 2. 33 & 44 Vict. c. 59, s. 2.]

33.—(1) The Governor-General in Council and any local Government (*a*) may, on behalf and in the name of the Secretary of State in Council, and subject to such provisions or restrictions as the Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, prescribes, sell and dispose of any movable or immovable property (*b*) whatsoever in India, within the limits of their respective governments, for the time being vested in His Majesty for the purposes of the government of India, or raise money on any such property by way of mortgage, and make proper assurances for any of these purposes, and purchase or acquire any property, movable or immovable (*b*), in India within the said respective limits, and make any contract for the purposes of the Government of India Act, 1858 (*c*).

(2) Every assurance and contract made for the purposes of this section must be executed by such person and in such manner as the Governor-General in Council by resolution (*d*) directs or authorizes, and if so executed may be enforced by or against the Secretary of State in Council for the time being.

(3) Neither the Secretary of State nor any member of the Council of India, nor any person executing any such assurance

or contract, is personally liable in respect thereof, but all liabilities in respect of any such assurance or contract are borne by the revenues of India.

(4) All property acquired in pursuance of this section vests in His Majesty for the service of the government of India.

(*a*) The words 'or any officer for the time being entrusted with the government, charge, or care of any presidency, province, or district' have been construed in practice as including only lieutenant-governors and chief commissioners, and not 'district officers' in the special India sense. They are therefore represented in the Digest by the expression 'local Government,' as defined by s. 124 of the Digest.

(*b*) The words in the Act are 'real or personal estate.'

(*c*) Soon after the passing of the Government of India Act, 1858, it became necessary to legislate for the purpose of determining how contracts on behalf of the Secretary of State in Council were to be made in India. Before that Act it had been held that contracts made in England by the East India Company as a governing power could only be made under seal (*Gibson* v. *East India Company*, 5 Bing. N. C. 262). In India, at least in the presidency towns, certain documents required sealing for the purpose of legal validity. The real seal of the Company was in England, but copies were kept in Calcutta, Madras, and Bombay, and documents sealed with these copies were generally accepted as sealed by the Company. Contracts not under seal were made in India on behalf of the Company by various officials. The transfer of the powers of the Company to the Secretary of State in Council disturbed all these arrangements, and the Government of India Act, 1859 (22 & 23 Vict. c. 41), was accordingly passed for determining the officers by whom, and the mode in which, contracts on behalf of the Secretary of State in Council were to be executed in India. The Act was amended by the East India Contracts Act, 1870 (33 & 34 Vict. c. 59).

(*d*) See the resolution of the Government of India in the Home Department of March 28, 1895, specifying the officers by whom particular classes of instruments may be executed.

Power to dispose of escheated property, &c. [16 & 17 Vict. c. 95, s. 27.]

34. The Governor-General in Council, and any other person authorized by any Act passed in that behalf by the Governor-General in Council, may make any grant or disposition of any property in British India accruing to His Majesty by forfeiture, escheat, or otherwise, to or in favour of any relative or connexion of the person from whom the property has accrued, or to or in favour of any other person.

As to escheat, see note (*c*) on s. 22 above.

Rights and liabilities of Secretary of State in Council. [21 & 22 Vict. c. 106, ss. 65, 68. 22 & 23 Vict. c. 41, s. 6.]

35.—(1) The Secretary of State in Council may sue and be sued as well in India as in England by the name of the Secretary of State in Council, as a body corporate (*a*).

(2) Every person has the same remedies against the Secretary of State in Council as he might have had against the East India Company if the Government of India Act, 1858, had not been passed (*b*).

(3) The property and effects for the time being vested in His Majesty for the purposes of the government of India, or acquired for those purposes, are liable to the same judgements and executions as they would have been liable to in respect of liabilities lawfully incurred by the East India Company if the Government of India Act, 1858, had not been passed.

(4) Neither the Secretary of State nor any member of the Council of India is personally liable in respect of any contract entered into or other liability incurred by the Secretary of State or the Secretary of State in Council in his or their official capacity, nor in respect of any contract, covenant, or engagement of the East India Company, but all such liabilities, and all costs and damages in respect thereof, are borne by the revenues of India.

(*a*) Although the Secretary of State is a body corporate, or in the same position as a body corporate, for the purpose of contracts, and of suing and being sued, yet he is not a body corporate for the purpose of holding property. Such property as formerly vested, or would have vested, in the East India Company, now vests in the Crown. See the remarks of James, L. J., in *Kinlock* v. *Secretary of State in Council* (1880), L. R. 15 Ch. D. 1. The Secretary of State in Council has privileges in respect of debts due to him in India similar to those of the Crown in respect of Crown debts in England (*The Secretary of State for India* v. *Bombay Landing and Shipping Company*, 5 Bom. H. C. Rep. O. C. J. 23).

(*b*) An action does not lie against the Crown in England. The only legal remedy of a subject against the Crown in England is by petition of right.

Until 1874 it was doubtful whether a petition of right would lie except for restitution of property detained by the Crown. But in that year it was decided that a petition would lie for damages for breach of contract (*R.* v. *Thomas*, L. R. 10 Q. B. 31); and that decision

has been followed in subsequent cases. A petition of right does not lie for a tort except where the wrong complained of is detention of property, the reason alleged being the maxim that the king can do no wrong. For a wrong done by a person in obedience or professed obedience to the Crown the remedy is against the wrongdoer himself and not against his official superior, because the ultimate superior, the Crown, is not liable. See Clode, *Law and Practice of Petition of Right*, and *R.* v. *Lords Commissioners of the Treasury*, 7 Q. B. 387, and *Raleigh* v. *Goschen*, [1898] 1 Ch. 73.

A petition of right does not lie in respect of property detained or a contract broken in India.

In the case of *Frith* v. *Reg.*, L. R. 7 Ex. 365 (1872), the suppliant, by petition of right, sought to recover from the Crown a debt alleged to have become due to the person whom he represented from the Sovereign of Oudh, before that province was annexed in 1856 to the territories of the East India Company. But it was held that, assuming the East India Company became liable to pay the debt by reason of the annexation of the province, the Secretary of State for India in Council, and not the Crown, was, under the provisions of the Government of India Act, 1858, the person against whom the suppliant must seek his remedy, and that consequently a petition of right would not lie. It was pointed out that the remedy by petition of right was inapplicable, as it was plain that the revenues of England could not be liable to pay the claim, and that consequently a judgement for the suppliant would be barren. See also *Doss* v. *The Secretary of State for India in Council*, L. R. 19 Ex. 509, and *Reiner* v. *Marquis of Salisbury*, L. R. 2 Ch. D. 378.

Under the enactments reproduced by this section there is a statutory remedy against the Secretary of State in Council, and that remedy is not confined to the classes of cases for which a petition of right would lie in England. See the judgement of Sir Barnes Peacock, C. J., in the case of the *P. & O. Company* v. *Secretary of State for India in Council* (1861), 2 Bourke 166; 5 Bom. H. C. R. Appendix A; and Mayne's *Criminal Law of India*, pp. 299 sqq. In *Secretary of State for India in Council* v. *Moment*, L. R. 40 Indian Appeals, 48 (1912), it was held that the remedy against the Secretary of State in Council under 21 & 22 Vict. c. 106, s. 65, could not be taken away by Indian legislation. On the other hand it would appear that, apart from special statutory provisions, the only suits which could have been brought against the East India Company, and which can be brought against the Secretary of State in Council as successor of the Company, are suits in respect of acts done in the conduct of undertakings which might be carried on by private individuals without sovereign powers. See *Nobin Chunder Dey* v. *The Secretary of State for India*, I. L. R. 1 Cal. 11 (1875); *Jehangir M. Cursetji* v. *Secretary of State for India in Council* (1902), I. L. R. 27 Bom. 189; *Shivabhajan* v. *Secretary of State for India*, I. L. R 28 Bom. 314.

A suit or action against the Secretary of State in Council may

sometimes be met by the plea that the act complained of falls within the category of 'acts of State,' and accordingly cannot be questioned by a municipal court. A plea of this kind was raised successfully in several cases by the East India Company with respect to proceedings taken by them, not in their character of trading company but in their character of territorial sovereigns. (As to the distinction between these two characters, see *Gibson* v. *East India Company* (1839), 5 Bing. N. C. 262; *Raja of Coorg* v. *East India Company* (1860), 29 Beav. 300, at p. 308; and the cases noted below.) And the principles laid down in these cases have been followed in the case of similar proceedings against the Secretary of State in Council.

The question whether the East India Company were acting as a sovereign power or as a private company was raised in *Moodalay* v. *The East India Company* (1785), 1 Bro. C. C. 469 (referred to in *Prioleau* v. *United States* (1866), L. R. 2 Eq. 659), but the first reported case in which the Company successfully raised the defence that they were acting as sovereigns, and that the acts complained of were 'acts of State,' appears to have been *The Nabob of the Carnatic* v. *East India Company* (1793), 1 Ves. Jr. 371; 2 Ves. Jr. 56; 3 Bro. C. C. 292; 4 Bro. C. C. 100. This was a suit for an account brought by the Nabob of Arcot against the East India Company. On the hearing it appeared by the Company's answer that the subject-matter of the suit was a matter of political treaty between the Nabob and the Company, the Company having acted throughout the transaction in their political capacity, and having been dealt with by the Nabob as if they were an independent sovereign. On this ground the bill was dismissed.

The same principle was followed in the case of *The East India Company* v. *Syed Ally* (1827), 7 Moo. Ind. App. 555, where it was held that the resumption by the Madras Government of a 'jaghire' granted by former Nawabs of the Carnatic before the date of cession to the East India Company and the regrant by the Madras Government to another, was such an act of sovereign power as precluded the Courts from taking cognizance of the question in a suit by the heirs of the original grantee.

The case of *Bedreechund* v. *Elphinstone* (1830), 2 State Trials, N. S. 379; 1 Knapp P. C. 316, raised the question as to the title to booty taken at Poonah, and alleged to be the property of the Peishwa. It was held that the transaction having been that of a hostile seizure made, if not *flagrante* yet *nondum cessante bello*, a municipal court had no jurisdiction to adjudge on the subject; and that if anything had been done amiss, recourse could be had only to the Government for redress. This decision was followed in *Ex pte. D. F. Marais* (1902), A. C. 109.

In the Tanjore case, *Secretary of State in Council of India* v. *Kamachee Boye Sahaba* (1859), 13 Moo. P. C. 22, a bill was filed on the equity side of the Supreme Court of Madras to establish a claim as private property to certain property of which the Government had taken possession, and for an account. The acts in question had been done on behalf of the Government by a commissioner appointed by them in connexion

with the taking over of Tanjore on the death of the Raja Sivaji without heirs. It was held that as the seizure was made by the British Government, acting as a sovereign Power, through its delegate, the East India Company, it was an act of State, to inquire into the propriety of which a municipal court had no jurisdiction. Lord Kingsdown, in delivering judgement, remarked that 'the general principle of law could not, with any colour of reason, be disputed. The transactions of independent States between each other are governed by other laws than those which municipal courts administer. Such courts have neither the means of deciding what is right nor the power of enforcing any decision which they make.' It was held that the act complained of fell within this principle. 'Of the propriety or justice of that act,' remarked Lord Kingsdown, 'neither the Court below nor the Judicial Committee have the means of forming, or the right of expressing if they had formed, any opinion. It may have been just or unjust, *politic or impolitic, beneficial or injurious, taken as a whole, to those* whose interests are affected. These are considerations into which their lordships *cannot enter. It is sufficient to say that*, even if a wrong has been done, it is a wrong for which no municipal court of justice can afford a remedy.'

In the Coorg case, *Raja of Coorg* v. *East India Company* (1860), 29 Beav. 300, the East India Company had made war against the Raja of Coorg, annexed his territory, and taken his property, including some of the Company's notes. The raja filed a bill against the East India Company, but it was held that the Company had acted in their sovereign capacity, and the bill was dismissed.

In the Delhi case, *Raja Salig Ram* v. *Secretary of State for India in Council* (1872), L. R. Ind. App. Supp. Vol., p. 119, the question was as to the validity of the seizure, after the Indian Mutiny, of estates formerly belonging to the titular King of Delhi. Here also it was held that the seizure was an act of State, and as such was not to be questioned in a municipal court.

In *Sirdar Bhagwan Singh* v. *Secretary of State for India in Council* (1874), L. R. 2 Ind. App. Cas. 38, an estate belonging to a former chief in the Punjab had been seized by the Crown, and the question was whether it had been so seized in right of conquest or by virtue of a legal title, such as lapse or escheat. It was held that the seizure had been made in right of conquest, and as such must be regarded as an act of State, and was not liable to be questioned in a municipal court.

Forester and others v. *Secretary of State for India in Council* (1872), L. R. Ind. App. Supp. Vol., p. 10, is a case on the other side of the line. In this case the Government of India had, on the death of Begum Sumroo, resumed property formerly belonging to her, and the legality of their action was questioned by her heirs. It appeared that the Begum had very nearly, but not quite acquired the position of a petty Indian sovereign, but that she was a British subject at the time of her death, and that the seizure in question was not the seizure, by arbitrary power, of territories which up to that time belonged to another

sovereign State, but was the resumption, under colour of a legal title, of lands previously held from the Government by a subject under a particular tenure, on the alleged determination of that tenure; and that consequently the questions raised by the suit were recognizable by a municipal court.

Doss v. *Secretary of State for India in Council* (1875), L. R. 19 Eq. 509, was a case arising out of the extinction of a sovereign power in India, though not in consequence of hostilities. It was a suit brought in the English Court of Chancery by creditors of the late King of Oudh against the Secretary of State as his successor. It was held that as the debt had been incurred by the late king in his capacity as sovereign, and could not have been enforced against him as a legal claim, it did not, upon the annexation of the kingdom of Oudh, become a legal obligation upon the East India Company, and therefore was not, by the Act of 1858, transferred as a legal obligation against the Secretary of State; and on this ground a demurrer to the bill was allowed.

In the case of *Grant* v. *Secretary of State for India in Council* (1877), 2 C. P. D. 445; 46 L. J. C. 681, a demurrer was allowed to an action by an officer of the East India Company's service who had been compulsorily retired under the order of the Government of India. Here the plaintiff was clearly a British subject, but nothing turned upon this. For the order was held, as an act of administration in the public service, to be within the high powers of government formerly entrusted to the East India Company (not as a trading company, but as a subordinate Government) and now to be exercised by the Government of India. In effect the question was not of a sovereign act, but of the powers of high (but still subordinate) officers of Government.

In *Kinlock* v. *Secretary of State for India* (1879), L. R. 15 Ch. D. 1 and 7 App. Cas. 619, which was one of the Banda and Kirwee cases, it was held that a royal warrant granting booty of war to the Secretary of State for India in Council in trust to distribute amongst the persons found entitled to share it by the decree of the Court of Admiralty, did not operate as a transfer of property, or create a trust, and that the defendant, being merely the agent of the sovereign, was not liable to account to any of the parties found entitled.

In *Walker* v. *Baird*, [1892] App. Cas. 491, which was an appeal to the Privy Council from the Supreme Court of Newfoundland, it was held that the plea of 'act of State,' in the sense of an act, the justification of which on constitutional grounds cannot be inquired into, cannot be admitted between British subjects in a British colony. In this case the plaintiff complained of interference with his lobster factory, and the defendant, a captain of one of Her Majesty's ships, pleaded that he was acting in the execution of his duty, in carrying out an agreement between the Queen and the Republic of France. But the defence was not allowed.

In *Cook* v. *Sprigg*, [1899] A. C. 572, it was held that grantees of concessions made by the paramount chief of Pondoland could not, after the annexation of Pondoland by the Queen, enforce against the

Crown the privileges and rights conferred by the concessions. The language used in the Tanjore case was quoted with approval.

In *West Rand Central Gold Mining Company Limited* v. *The King*, [1905] 2 K. B. 391, it was held, on demurrer to a petition of right, that damages could not be recovered against the Crown in respect of gold 'commandeered' by the Boer Government before the annexation of the Transvaal.

The facts in Dhuleep Singh's case, *Salaman* v. *Secretary of State for India in Council*, [1905] 1 K. B. 613, resembled those in the Tanjore case. When the Punjab was annexed, the East India Company confiscated the State property, granted Dhuleep Singh a pension for life, assumed the custody of his person during his minority, and took possession of his private property. It was held that these were acts of State, and that an action would not lie against the Secretary of State in Council for arrears of the pension and for an account of the personal property.

On 'acts of State,' see further, Mayne, *Criminal Law of India*, pp. 318 sqq., the article 'Act of State' in the *Encyclopaedia of the Laws of England*, and the cases collected in the notes on *The Queen* v. *The Commissioners of the Treasury*, L. R. 7 Q. B. 387, in Campbell's *Ruling Cases*, vol. i. pp. 802 sqq. The notes on Indian cases in that volume have been partially reproduced above. Mr. Harrison Moore's recent essay on *Act of State in English Law* (London, 1906) covers wider ground, and touches on many points in the 'troublesome borderland of law and politics.'

In suits or actions against the Secretary of State for breach of contract of service, regard must also be had to the principles regulating the tenure of servants under the Crown (see note on s. 21 above).

And, finally, the liability of the Secretary of State in Council to be sued does not deprive the Crown of the privileges to which it is entitled by virtue of the prerogative. In *Ganpat Pataya* v. *Collector of Canara* (1875), I. L. R. 1 Bom. 7, the priority of Crown debts over attachment was maintained, and West, J., said—'It is a universal rule that prerogative and the advantages it affords cannot be taken away except by the consent of the Crown embodied in statute. This rule of interpretation is well established, and applies not only to the statutes passed by the British, but also to the Acts of the Indian Legislature framed with constant reference to the rules recognized in England.'

As to the legal liability of a colonial governor, Sir W. Anson says—'He can be sued in the courts of the colony in the ordinary form of procedure. Whether the cause of action springs from liabilities incurred by him in his private or in his public capacity, this rule would appear to hold good. Though he represents the Crown he has none of the legal irresponsibility of the sovereign within the compass of his delegated and limited sovereignty.' *Law and Custom of the Constitution*, 3rd ed., vol. ii. pt. ii. p. 81. See *Hill* v. *Bigge*, 3 Moore P. C. 465; *Musgrove* v. *Pulido*, L. R. 5 App. Cas. 102; *Nireaha Tamaki* v. *Baker*, App. Cas., [1901] pp. 561, 576, and Keith, *Responsible Government in*

the Dominions, vol. i. pt. ii. chap. ii. The position of the Lord-Lieutenant of Ireland appears to be different. *See* Anson, ib.

The procedure in suits against the Government in India is regulated by Order xxvii in the first schedule to the Code of Civil Procedure (Act V of 1908).

PART IV

THE GOVERNOR-GENERAL IN COUNCIL.

General Powers of Governor-General in Council.

General powers and duties of Governor-General in Council. [13 Geo. III, c. 63, s. 9. 3 & 4 Will. IV, c. 85, s. 39.]

36.—(1) The superintendence, direction, and control of the civil and military government of British India is vested in the Governor-General of India in Council (*a*).

(2) The Governor-General in Council is required to pay due obedience to all such orders as he may receive from the Secretary of State (*b*).

(*a*) It is difficult to reproduce with accuracy enactments which regulated the powers and duties of the Governor-General and his Council in the days of the East India Company.

Section 9 of the Regulating Act of 1773 (13 Geo. III, c. 63) enacts that 'the said governor-general and council' (i.e. the Governor-General and Council of Bengal), 'or the major part of them, shall have . . . power of superintending and controlling the presidencies of Madras, Bombay, and Bencoolen respectively, so far and in so much as that it shall not be lawful for any president and council of Madras, Bombay, or Bencoolen' to make war or treaties without the previous consent of the governor-general and council, except in cases of imminent necessity or of special orders from the Company. See s. 49 of this Digest. Section 39 of the Charter Act of 1833 (3 & 4 Will. IV, c. 85) declared that 'The superintendence, direction, and control of the whole civil and military government of all the said territories and revenues in India shall be and is hereby vested in a governor-general and councillors, to be styled "The Governor-General of India in Council."'

Since India has been placed under the direct government of the Crown the governor-general has also been viceroy, as the representative of the sovereign. Lord Canning was the first viceroy.

The Governor-General in Council is often described as the Government of India, a description which is recognized by Indian legislation (X of 1897, s. 3 (22)).

Of course the reproduction of statutory enactments embodied in this Digest is not an exhaustive statement of the powers of the Governor-General in Council. For instance, the powers of the Government of India, as the paramount authority in India, extend beyond the limits of British India.

Again, the Governor-General in Council, as representing the Crown in India, enjoys, in addition to any statutory powers, such of the powers, prerogatives, privileges, and immunities appertaining to the Crown as are appropriate to the case and consistent with the system of law in force in India. Thus it has been decided that the rule that the Crown is not bound by a statute unless expressly named therein applies also in India. See *Secretary of State for India* v. *Bombay Landing and Shipping Company*, 5 Bom. H. C. Rep. O. C. J. 23; *Ganpat Pataya* v. *Collector of Canara*, I. L. R. 1 Bom. 7; *The Secretary of State for India* v. *Matthurabhai*, I. L. R. 14 Bom. 213, 218; *Bell* v. *Municipal Commissioners for Madras*, I. L. R. 25 Mad. 457. The Governor-General in Council has also, by delegation, powers of making treaties and arrangements with Asiatic States, of exercising jurisdiction and other powers in foreign territory, and of acquiring and ceding territory. See *Damodhar Khan* v. *Deoram Khanji*, I. L. R. 1 Bom. 367, L. R. 2 App. Cas. 332; *Lachmi Narayan* v. *Raja Pratab Singh*, I. L. R. 2 All. 1; *Hemchand Devchand* v. *Azam Sakarlal Chhotamlal* and *The Taluka of Kotda Sangani* v. *The State of Gondal*, A. C., [1906] 212, and below, p. 417. Moreover, the Government of India has powers, rights, and privileges derived, not from the English Crown, but from the native princes of India, whose rule it has superseded. For instance, the rights of the Government in respect of land and minerals in India are different from the rights of the Crown in respect of land and minerals in England. Whether and in what cases the Governor-General has the prerogative of pardon has been questioned. The power is not expressly conferred on him by his warrant of appointment, but it would be strange if he had not a power possessed by all colonial governors. However, the power of remitting sentences under the Code of Criminal Procedure makes the question of little practical importance. As to the prerogatives of the Crown in India and elsewhere, see Chitty, *Prerogatives of the Crown*; Forsyth, *Cases and Opinions*, chap. v; and Campbell's *Ruling Cases*, vol. viii. pp. 150–275.

The Madras and Bombay Armies Act, 1893 (56 & 57 Vict. c. 62), took away the military control and authority previously exercisable by the Governments of Madras and Bombay. As to the power of the governor-general to grant military commissions, see the note below, p. 295.

(*b*) This reproduces part of s. 9 of the Regulating Act (13 Geo. III, c. 63), which directs that 'the said governor-general and council for the time being shall and they are hereby directed and required to obey all such orders as they shall receive from the Court of Directors of the said united Company.' This enactment was necessary at a time when the relations to be regulated were those between the statutory governor-general and his council on the one hand and the directors of the Company on the other, and, being still on the statute book, is reproduced here. But, of course, the relations between the Secretary of State and the Government of India are now regulated by constitutional usage.

The Governor-General.

The governor-general.

37. The Governor-General of India is appointed by His Majesty by warrant under the Royal Sign Manual.

[21 & 22 Vict. c. 106, s. 29.]

The appointment of the governor-general is made on the advice of the Prime Minister.

The governor-general usually holds office for a term of five years. As to his resignation, see below, s. 82.

The Council of the Governor-General.

Constitution of governor-general's council.

38. The council of the Governor-General of India, as constituted for executive purposes, consists of the ordinary members, and of the extraordinary member (*a*) (if any) thereof (*b*).

(*a*) See s. 40.

(*b*) This section does not reproduce any specific enactment, but represents the existing law.

Ordinary members of council.

39.—(1) The ordinary members of the governor-general's council are appointed by His Majesty by warrant under the Royal Sign Manual.

[21 & 22 Vict. c. 106, s. 7. 24 & 25 Vict. c. 67, s. 3. 32 & 33 Vict. c. 97, s. 8. 37 & 38 Vict. c. 91, s. 1. 4 Edw. VII, c. 26.]

(2) The number of the ordinary members of the governor-general's council is five, or, if His Majesty thinks fit to appoint a sixth member, six (*a*).

(3) Of the ordinary members of the governor-general's council, three must be persons who at the time of their appointment have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, of not less than five years' standing (*b*).

(4) If any person appointed an ordinary member of the governor-general's council is at the time of his appointment in the military service of the Crown, he may not, during his continuance in office as such member, hold any military command or be employed in actual military duties (*c*).

(*a*) The number is at present six. The power given by 37 & 38 Vict. c. 91 to appoint a sixth member specifically for public works purposes

was made a general power by 4 Edw. VII c. 26. Under existing arrangements the business of the Government of India is distributed between nine departments—Finance, Foreign, Home, Legislative, Revenue and Agriculture, Public Works, Commerce and Industry, Army, Education. Of these the Foreign Department is under the immediate superintendence of the governor-general, and the Army Department is under the commander-in-chief of His Majesty's forces in India (see s. 40 of Digest). The charge of the other departments is distributed between the other members of council.

The term of office of a member of council is by custom five years. As to leave of absence, resignation, and conditional and temporary appointments, see below, ss. 81–87.

(*b*) The member of council who is required to hold these qualifications is usually styled the law member. The first holder of the post was Lord Macaulay. He and his successors, down to 1853, were not members of the executive council, and his duties during this period are described by Sir Barnes Peacock in a minute of November 3, 1859, and by Sir H. S. Maine in his minute of May 5, 1866 (Minutes, No. 42). By the Act of 1853 (16 & 17 Vict. c. 95) he was placed in the same position as the other ordinary members of the governor-general's council. He is at the head of a department of his own, the Legislative Department, which was formerly a branch of the Home Department, but which was, in pursuance of Sir H. S. Maine's recommendations (see Minutes by Sir H. S. Maine, No. 84), constituted a separate department in 1869. The duties of this department, and its relation to the other branches of the Government of India, are regulated by the rules and orders for the transaction of business in the council of the governor-general. Practically, its functions are to prepare the drafts of all legislative measures introduced into the governor-general's council, to consider, and in some cases to settle, the form of regulations submitted under the Government of India Act, 1870 (33 Vict. c. 3), and of the rules and regulations made under powers given by Acts of the governor-general's council, to consider Bills and Acts of the local legislatures with reference to penal clauses and other special points, and to advise other departments of the Government on various legal questions. The law member of council takes charge of some of the Bills introduced into the governor-general's council, and is a member and usually chairman of the select committees to which those Bills are referred. As to the general nature of his work, see the chapter on Legislation under Lord Mayo, contributed by Sir James FitzJames Stephen to Sir W. W. Hunter's *Life of Lord Mayo* (vol. ii. chap. viii). See also Sir H. S. Maine's Minute of 1868 on Over-legislation (Minutes, No. 204).

(*c*) The military supply department and the office of the member in charge of that department have now been abolished. See East India (Army Administration) Report, 1909. Cd. 4574. A sixth member, placed in charge of the subject of education, was added in 1910.

Extra-ordinary members of council. [24 & 25 Vict. c. 67, ss. 3, 9.]

40.—(1) The Secretary of State in Council may, if he thinks fit, appoint the commander-in-chief for the time being of His Majesty's forces in India an extraordinary member of the governor-general's council, and in that case the commander-in-chief has rank and precedence in the council next after the governor-general (*a*).

(2) When and so long as the governor-general and his council are in any province administered by a governor in council, the governor of that province is an extraordinary member of the governor-general's council (*b*).

(*a*) In practice, the commander-in-chief is always appointed an extraordinary member of council. Under regulations made in 1905 he is in charge of the army department.

(*b*) In practice, meetings of the governor-general and his council are not held within the presidencies of Bengal, Madras, and Bombay.

Ordinary and legislative meetings of governor-general's council.

41.—(1) The governor-general's council hold ordinary meetings, that is to say, meetings for executive purposes; and legislative meetings, that is to say, meetings for the purpose of making laws.

(2) The ordinary and extraordinary members of the governor-general's council are entitled to be present at all meetings thereof.

This section does not reproduce any specific enactment, but represents existing law and practice.

Ordinary meetings of council. [3 & 4 Will. IV, c. 85, s. 48. 24 & 25 Vict. c. 67, s 9.]

42.—(1) The ordinary meetings of the governor-general's council are held at such places in India (*a*) as may be appointed by the Governor-General in Council.

(2) At any ordinary meeting of the governor-general's council the governor-general or other person presiding and one ordinary member of his council may exercise all the functions of the Governor-General in Council (*b*).

(*a*) The expression used in the Act of 1861 is 'within the territories of India,' which, perhaps, means British India. In practice, the meetings of the council are held at Delhi and Simla.

(*b*) The Act of 1793 (33 Geo. III, c. 52, s. 38) directs that 'the Governor-General and councillors of Fort William, and the several governors and councillors of Fort Saint George and Bombay, shall at

their respective council boards proceed in the first place to the consideration of such matters as shall be proposed by the governor-general or by the governors of the said presidencies respectively, and as often as any matter or question shall be propounded by any of the said councillors it shall be competent to the said governor-general or governor respectively to postpone and adjourn the discussion thereof to a future day, provided that no such adjournment shall exceed forty-eight hours, nor shall the matter or question so proposed be adjourned more than twice without the consent of the councillor who proposed the same.'

This enactment, though not specifically repealed, is practically superseded by the rules and orders made under the Indian Councils Act, 1861, and therefore is not reproduced in the Digest.

The governor-general, when present, presides. He must now, under the Indian Councils Act, 1909 (9 Edw. VII, c. 4, s. 4) appoint a vice-president.

Business of Governor General in Council [33 Geo III, c. 52, s. 39. 53 Geo. III, c. 155, s. 79. 24 & 25 Vict. c. 67, s. 8.]

43.—(1) All orders and other proceedings of the Governor-General in Council must be expressed to be made by the Governor-General in Council, and must be signed by a secretary to the Government of India, or otherwise as the Governor-General in Council may direct (*a*).

(2) The governor-general may make rules and orders (*b*) for the more convenient transaction of business in his council, other than the business at legislative meetings, and every order made or act done in accordance with such rules and orders must be treated as being the order or the act of the Governor-General in Council.

(*a*) Under the Act of 1793 (33 Geo. III, c. 52, s. 39) the signature referred to is that of 'the chief secretary to the council of the presidency.'

Under the Act of 1813 (53 Geo. III, c. 155, s. 79) orders or proceedings may be signed either by the chief secretary to the Government of the said presidency, or, in the absence of such chief secretary, by the principal secretary of the department of such presidency to which such orders or proceedings relate.

Under Act II of 1834 of the Indian Legislature, each of the secretaries to the Government of India and to the Government of Fort William in Bengal is declared to be competent to perform all the duties and exercise all the powers which by any Act of Parliament or any regulation then in force were assigned to the chief secretary to the Government of Fort William in Bengal, and each of the secretaries to the Governments of Fort St. George and Bombay is declared to be competent to perform all the duties and exercise all the powers which by any such Act or regulation were assigned to the chief secretaries to the Governments of Fort St. George and Bombay respectively.

Under these circumstances this section of the Digest probably represents the form in which Parliament would re-enact the existing statutory provisions, especially as they are provisions which may be modified by Indian Acts. See 24 & 25 Vict. c. 67, s. 22.

In practice, orders and proceedings are signed by the secretary of the department to which they relate.

(*b*) The rules and orders made under this section appear to be treated by the Government of India as confidential, and have not been published. The most important effect of the section has been to facilitate the departmental transaction of business.

Procedure in case of difference of opinion. [13 Geo. III, c. 63, s. 8. 3 & 4 Will. IV, c. 85, s. 48.]

44.—(1) At any ordinary meeting of the governor-general's council, if any difference of opinion arises on any question brought before the council, the Governor-General in Council is bound by the opinion and decision of the majority of those present, and if they are equally divided the governor-general, or other person presiding, has two votes or the casting vote.

[33 Geo. III, c. 52, ss. 47, 48, 49. 33 & 34 Vict. c. 3, s. 5.]

(2) Provided that whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquillity, or interests of British India, or of any part thereof, are or may be, in the judgement of the governor-general, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion, the governor-general may, on his own authority and responsibility, adopt, suspend, or reject the measure in whole or in part.

(3) In every such case any two members of the dissentient majority may require that the adoption, suspension, or rejection of the measure, and the fact of their dissent, be notified to the Secretary of State, and the notification must be accompanied by copies of any minutes which the members of the council have recorded on the subject.

(4) Nothing in this section empowers the governor-general to do anything which he could not lawfully have done with the concurrence of his council.

The Regulating Act of 1773 (13 Geo. III, c. 63, s. 8) provides that 'in all cases whatever wherein any difference of opinion shall arise upon any question proposed in any consultation, the said governor-general and council shall be bound and concluded by the opinion and decision of the major part of those present. And if it shall happen that, by the death or removal, or by the absence of any of the members of the said council, such governor-general and council shall be equally divided, then, and in every such case, the said governor-general, or, in his absence, the eldest councillor present, shall have a casting vote, and his opinion shall be decisive and conclusive.'

The Charter Act of 1833 (3 & 4 Will. IV, c. 85, s. 48) enacts that 'in every case of difference of opinion at meetings of the said council where there shall be an equality of votes, the said governor-general shall have two votes or the casting vote.'

The difficulties which Warren Hastings encountered in his council under the Act of 1773 are well known, and Lord Cornwallis stipulated, on his appointment, that his hands should be strengthened; accordingly by an Act of 1786 (26 Geo. III, c. 10) the governor-general was empowered in special cases to override the majority of his council and act on his own responsibility. (See above, p. 67.)

The provisions of the Act of 1786 were re-enacted by ss. 47, 48, and 49 of the Charter Act of 1793 (33 Geo. III, c. 52), which are still in force, and which run as follows:—

'47. And whereas it will tend greatly to the strength and security of the British possessions in India, and give energy, vigour, and dispatch to the measures and proceedings of the executive Government within the respective presidencies, if the Governor-General of Fort William in Bengal and the several governors of Fort Saint George and Bombay were vested with a discretionary power of acting without the concurrence of their respective councils, or forbearing to act according to their opinions, in cases of high importance, and essentially affecting the public interest and welfare, thereby subjecting themselves personally to answer to their country for so acting or forbearing to act: Be it enacted, that when and so often as any measure or question shall be proposed or agitated in the Supreme Council at Fort William in Bengal, or in either of the councils of Fort Saint George and Bombay, whereby the interests of the said united Company, or the safety or tranquillity of the British possessions in India, or in any part thereof, are or may, in the judgement of the governor-general or of the said governors respectively, be essentially concerned or affected, and the said governor-general or such governors respectively shall be of opinion that it will be expedient, either that the measures so proposed or agitated ought to be adopted or carried into execution, or that the same ought to be suspended or wholly rejected, and the several other members of such council then present shall differ in and dissent from such opinion, the said governor-general or such governor and the other members of the council shall and they are hereby directed forthwith mutually to exchange with and communicate in council to each other,

in writing under their respective hands (to be recorded at large on their secret consultations), the respective grounds and reasons of their respective opinions; and if after considering the same the said governor-general or such governor respectively, and the other members of the said council, shall severally retain their opinions, it shall and may be lawful to and for the said governor-general in the Supreme Council of Fort William, or either of the said governors in their respective councils, to make and declare any order (to be signed and subscribed by the said governor-general or by the governor making the same) for suspending or rejecting the measure or question so proposed or agitated, in part or in whole, or to make and declare such order and resolution for adopting and carrying the measure so proposed or agitated into execution, as the said governor-general or such governors in their respective councils shall think fit and expedient; which said last-mentioned order and resolution so made and declared shall be signed as well by the said governor-general or by the governor so making and declaring the same as by all the other members of the council then present, and shall, by force and virtue of this Act, be as effectual and valid to all intents and purposes as if all the said other members had advised the same or concurred therein; and the said members in council, and all officers civil and military, and all other persons concerned, shall be and they are hereby commanded, authorized, and enjoined to be obedient thereto, and to be aiding and assisting in their respective stations in the carrying the same into execution.

'48. And . . . that the governor-general or governor who shall declare and command any such order or resolution to be made and recorded without the assent or concurrence of any of the other members of council shall alone be held responsible for the same and the consequences thereof.

'49. Provided always . . . that nothing in this Act contained shall extend or be construed to extend to give power to the said Governor-General of Fort William in Bengal, or to either of the said governors of Fort Saint George and Bombay respectively, to make or carry into execution any order or resolution which could not have been lawfully made and executed with the concurrence of the councils of the respective Governments or presidencies, anything herein contained to the contrary notwithstanding.'

The Government of India Act, 1870 (33 & 34 Vict. c. 3, s. 5), enacts that 'Whenever any measure shall be proposed before the Governor-General of India in Council, whereby the safety, tranquillity, or interests of the British possessions in India, or any part thereof, are or may be, in the judgement of the said governor-general, essentially affected, and he shall be of opinion either that the measure proposed might be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority in council then present shall dissent from such opinion, the governor-general may, on his own authority and responsibility, suspend or reject the measure in part or in whole, or adopt and carry it into execution; but in every such case two members

of the dissentient majority may require that the said suspension, rejection, or adoption, as well as the fact of their dissent, shall be notified to the Secretary of State for India; and such notification shall be accompanied by copies of the minutes (if any) which the members of the council shall have recorded on the subject.'

This enactment practically supersedes, but does not expressly repeal, the enactments in the Act of 1793, but does not apply to the Governments of Madras and Bombay. It was under the enactment of 1870 that Lord Lytton acted in March, 1879, when he exempted certain imported cotton goods from customs duty.

Provision for appointment of president of council. [24 & 25 Vict. c. 67, s. 6.]

45.—(1) Whenever the Governor-General in Council declares that it is expedient that the governor-general should visit any part of India, unaccompanied by his council, the Governor-General in Council may appoint some member of the council to be president of the governor-general's council during the time of the visit.

(2) The president of the governor-general's council has, during his term of office, the powers of the governor-general at ordinary meetings of the governor-general's council (*a*).

(*a*) The object of this section is to make provision for the current business of Government during the temporary absence of the governor-general. The last occasion on which it was put in force was Lord Dufferin's visit to Burma after the annexation of Upper Burma. In such cases the governor-general retains his own powers under s. 47 (1). This power is not exercised on the occasion of the viceroy's ordinary annual tour. Probably the duty under the Indian Councils Act, 1909 (9 Edw. VII, c. 4, s. 4), to appoint a vice-president makes the power unnecessary.

Provision for absence of governor-general, or president, from meetings of council. [24 & 25 Vict. c. 67, s. 7.]

46. If the governor-general, or the president of the governor-general's council, is obliged to absent himself from any ordinary meeting of the governor-general's council by indisposition, or any other cause, and signifies his intended absence to the council, the vice-president, or, in his absence, the senior ordinary (*a*) member present at the meeting presides thereat, with the like powers as the governor-general would have had, if present.

Provided that if the governor-general, or president, is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act

of council made at the meeting, the act requires his signature; but if he declines or refuses to sign it, the like provisions have effect as in cases where the governor-general, when present, dissents from a majority of the meeting of the council (*b*).

(*a*) The word 'ordinary' is not in the Act of 1861, but is probably implied. The vice-president is appointed under the Indian Councils Act, 1909 (9 Edw. VII, c. 4, s. 4).

(*b*) See s. 44.

Powers of governor-general in absence from Council. [33 Geo. III, c. 52, ss. 54, 55. 24 & 25 Vict. c. 67, s. 6.]

47.—(1) In any case where a president of the council may be appointed, the Governor-General in Council may by order authorize the governor-general alone to exercise, in his discretion, all or any of the powers which might be exercised by the Governor-General in Council at ordinary meetings (*a*).

(2) The governor-general during absence from his council may, if he thinks it necessary, issue, on his own responsibility, any order which might have been issued by the Governor-General in Council to any local Government, or to any officers or servants of the Crown acting under the authority of any local Government, without previously communicating the order to the local Government, and any such order is of the same force as if made by the Governor-General in Council, but a copy of the order must be sent forthwith to the Secretary of State and to the local Government, with the reasons for making the order.

(3) The Secretary of State in Council may by order suspend until further order all or any of the powers of the governor-general under the last foregoing sub-section, and those powers will accordingly be suspended as from the time of the receipt by the governor-general of the order of the Secretary of State in Council (*b*).

(*a*) This provision supplements s. 45.

(*b*) The provisions of sub-sections (2) and (3) are reproduced from ss. 54 and 55 of the Act of 1793 (33 Geo. III, c. 52). But those sections were enacted in circumstances very different from those of the present time, and are practically superseded by the enactment reproduced in sub-section (1).

War and Treaties.

Restriction on power of Governor-General in Council to make war or treaty. [33 Geo. III, c. 52, s. 42.]

48.—(1) (*a*) The Governor-General in Council may not, without the express command of the Secretary of State in Council, in any case (except where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made against the British Government in India or against any prince or State dependent thereon, or against any prince or State whose territories His Majesty has engaged by any subsisting treaty to defend or guarantee) either declare war or commence hostilities or enter into any treaty for making war against any prince or State in India, or enter into any treaty for guaranteeing the possessions of any such prince or State.

(2) In any such excepted case the Governor-General in Council may not declare war or commence hostilities or enter into a treaty for making war against any other prince or State than such as is actually committing hostilities or making preparations as aforesaid, and may not make a treaty for guaranteeing the possessions of any prince or State except on the consideration of that prince or State actually engaging to assist His Majesty against such hostilities commenced or preparations made as aforesaid.

(3) When the Governor-General in Council commences any hostilities or makes any treaty, he must forthwith communicate the same, with the reasons therefor, to the Secretary of State.

(*a*) This section first appeared in Pitt's Act of 1784 (24 Geo. III, sess. 2, c. 25, s. 34), and was preceded by the preamble:—'Whereas to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour, and policy of this nation.' (See above, p. 64.) It was re-enacted, with the preamble, by s. 42 of the Act of 1793, and, as so re-enacted, is still on the statute book. It is of historical interest as an expression of the views with which the expansion of the territorial possessions of the East India Company was regarded in the eighteenth century, but as it relates only to hostilities against and treaties with the 'country princes or States in India,' it is no longer of practical importance. The last provision, though expressed in general terms, obviously refers to the hostilities and treaties referred to in the preceding part.

PART V

LOCAL GOVERNMENTS.

General.

Relation of local Governments to Governor-General in Council. [13 Geo. III, c. 63, s. 9. 33 Geo. III, c. 52, ss. 24, 40, 41, 43, 44. 3 & 4 Will. IV, c. 85, ss. 65, 67.]

49.—(1) Every local Government (*a*) must obey the orders of the Governor-General in Council, and keep him constantly and diligently informed of its proceedings, and is under his superintendence and authority in all matters relating to the administration of its province.

(2) No local Government may make or issue any order for commencing hostilities or levying war, or negotiate or conclude any treaty of peace or other treaty with any Indian prince or State (except in cases of sudden emergency or imminent danger when it appears dangerous to postpone such hostilities or treaty), unless in pursuance of express orders from the Governor-General in Council or from the Secretary of State, and every such treaty must, if possible, contain a clause subjecting the same to the ratification or rejection of the Governor-General in Council.

(3) The authority of a local Government is not superseded by the presence in its province of the governor-general (*b*).

(*a*) The expression 'local Government' is defined by s. 124 to mean a governor in council, lieutenant-governor, lieutenant-governor in council, or chief commissioner. By the Indian General Clauses Act (X of 1897) it is defined to mean the person authorized by law to administer executive government in the part of British India in which the Act containing the expression operates, and to include a chief commissioner. As to the existing local Governments, see above, p. 141.

(*b*) This section reproduces enactments which applied to the Governments of Madras and Bombay, and were passed with the object of maintaining proper control by the Government of Bengal over the Governments of the two other presidencies. Of course the circumstances of the present day are widely different. Some of the provisions of the enactments reproduced are omitted, as having been made unnecessary by the existence of telegraphic communications, and by other alterations of circumstances. For instance, it has not been considered necessary to reproduce the power of the governor-general to suspend a local Government.

Governments of Bengal, Madras, and Bombay.

Governments of Bengal, Madras, and Bombay. [33 Geo. III, c. 52, s. 24. 3 & 4 Will. IV, c. 85, ss. 56, 57. 21 & 22 Vict. c. 106, s. 29. 2 & 3 Geo. V, c. 6, s. 1 (1).]

50.—(1) The presidencies (*a*) of Fort William in Bengal, Fort St. George, and Bombay are, subject to the provisions embodied in this Digest (*b*), administered by the Governors in Council of Bengal, Madras, and Bombay respectively, and are in this Digest referred to as the presidencies of Bengal, Madras, and Bombay respectively.

(2) The governors of Bengal, Madras, and Bombay are appointed by His Majesty by warrant under the Royal Sign Manual (*c*).

(3) The Secretary of State may, if he thinks fit, by order, revoke or suspend, for such period as he may direct, the appointment of a council for any or all of those presidencies, and whilst any such order is in force the governor of the presidency to which the order refers has all the powers of the Governor thereof in Council (*d*).

(4) Except as otherwise declared in this Digest, the Governor and Governor in Council of Bengal and the members of that Council have, within Bengal, all the rights, duties, functions and immunities which the Governors and Governors in Council of Madras and Bombay and the members of those Councils respectively possess.

(5) The Governor-General in Council may reserve to himself any powers which before June 25, 1912, were exercisable by him in relation to Bengal, and thereupon those powers continue to be exercisable by the Governor-General in Council in the like manner and to the like extent as before that date (*e*).

(*a*) The modern presidency of Bengal is confined within narrower limits than the old Bengal presidency, which included all British India outside the presidencies of Madras and Bombay. The Governments of Bengal, Madras, and Bombay occupy a position different from and superior to that of the other local Governments. The governor is appointed by the Crown, and not by the governor-general; he is assisted by an executive council, and he retains the right of communicating directly with the Secretary of State (above, s. 15).

(*b*) e.g. to the control of the governor-general.

(*c*) Before the Act of 1858 the appointments were made by the Court of Directors with the approval of the Crown.

(*d*) This power was given by the Act of 1833, but has never been exercised.

(*e*) The Governor-General in Council has reserved to himself all powers exercisable by him in relation to the High Court at Calcutta—see Gazette of India, Extraordinary, August 1, 1912.

Ordinary members of councils. [33 Geo. III, c. 52, ss. 24, 25. 3 & 4 Will. IV, c. 85, ss. 56, 57. 32 & 33 Vict. c. 97, s. 8. 9 Edw. VII, c. 4, s. 2.]

51.—(1) The ordinary (*a*) members of the councils of the governors of Bengal, Madras, and Bombay are appointed by His Majesty by warrant under the Royal Sign Manual.

(2) The number of the ordinary members of each of the said councils is such number not exceeding four as the Secretary of State in Council directs (*b*).

(3) Two at least of the ordinary members of the said councils must be persons who at the time of their appointments have been for at least twelve years in the service of the Crown in India (*c*).

[33 Geo. III, c. 52, s. 33.]

(4) Provided that if the commander-in-chief of His Majesty's forces in India (not being likewise governor-general) happens to be resident at Calcutta, Madras, or Bombay he is, during his continuance there, a member of the governor's council (*d*).

(*a*) The commanders-in-chief of the Madras and Bombay armies might be appointed, and, in fact, were always appointed, extraordinary members of the Madras and Bombay Councils. But these offices were abolished by the Madras and Bombay Armies Act, 1893 (56 & 57 Vict. c. 62). The term 'ordinary' is used in this section by way of distinction from additional or legislative members (see s. 60).

(*b*) The number was reduced from three to two in 1833. The maximum was raised to four in 1909, and the number is now three.

(*c*) The qualification under 33 Geo. III, c. 52, s. 25, is twelve years' residence in India in the service of the East India Company. The qualification for membership of the governor-general's council is somewhat different (s. 39).

(*d*) This proviso, which is taken from the Act of 1793, is practically inoperative.

Ordinary and legislative meetings of Bengal, Madras, and Bombay Councils.

52.—(1) The councils of the governors of Bengal, Madras, and Bombay hold ordinary meetings, that is to say, meetings for executive purposes; and legislative meetings, that is to say, meetings for the purpose of making laws.

(2) The ordinary members of those councils are entitled to be present at all meetings thereof (*a*).

(*a*) This section does not reproduce any specific enactment, but represents the existing law.

53. The foregoing provisions of this Digest with respect to the procedure in case of a difference of opinion between the governor-general and his council, and in case of the governor-general being obliged to absent himself from his council by indisposition or other cause, apply, with the necessary modifications, in the case of a difference of opinion between the Governor of Bengal or Madras or Bombay and his council, and in the case of either of those governors being obliged to absent himself from his council (*a*).

Procedure in cases of difference of opinion. [33 Geo. III, c. 52, ss. 47, 48, 49. 9 Edw. VII, c. 4, s. 2 (2).]

(*a*) See ss. 44 and 46. Section 44 reproduces 33 Geo. III, c. 52, ss. 47-49, as modified by 33 & 34 Vict. c. 3, s. 5. The last enactment applies only to the governor-general's council, but, as will be seen from the note to s. 44, does not substantially modify the Act of Geo. III. Under the Indian Councils Act, 1909 (9 Edw. VII, c. 4, s. 4), as applied by the Government of India Act, 1912 (2 & 3 Geo. V, c. 6, s. 1 (1)), the Governors of Bengal, Madras, and Bombay must appoint vice-presidents of their councils.

54.—(1) All orders and other proceedings of the Governor of Bengal in Council, of the Governor of Madras in Council, and of the Governor of Bombay in Council must be expressed to be made by the Governor in Council, and must be signed by a secretary to the Government of the province, or otherwise as the Governor in Council may direct (*a*).

Business of Governor in Council. [33 Geo. III, c. 52, s. 39. 53 Geo. III, c. 155, s. 79. 24 & 25 Vict. c. 67, s. 28.]

(2) The governors of Bengal, Madras, and Bombay respectively may make rules and orders for the conduct of business in their respective councils, other than the business at legislative meetings, and every order made or act done in accordance with such rules and orders is deemed to be the order or the act of the Governor in Council.

(*a*) See note on s. 43.

Lieutenant-Governorships and other Provinces.

55.—(1) The provinces (*a*) known as the United Provinces of Agra and Oudh (*b*), the Punjab (*c*), Burma (*c*), and Bihar and Orissa (*a*) are, subject to the provisions of this Digest, governed by lieutenant-governors (*a*).

Lieutenant-governors. [5 & 6 Will. IV, c. 52, s. 2.]

16 & 17 Vict. c. 95, s. 16. 17 & 18 Vict. c. 77, s. 4. 21 & 22 Vict. c. 106, s. 29.]

(2) Every lieutenant-governor of a province in India is appointed by the governor-general, subject to the approval of His Majesty (*d*).

(3) A lieutenant-governor must have been, at the time of his appointment, at least ten years in the service of the Crown in India (*e*).

(4) The Governor-General in Council may, with the approval of the Secretary of State in Council, declare and limit the extent of the authority of any lieutenant-governor (*f*).

(*a*) By s. 16 of the Government of India Act, 1853, the Court of Directors were authorized to declare that the Governor-General of India should not be Governor of the Presidency of Fort William in Bengal, but that a separate governor should be appointed for that presidency, and in that case a governor was to be appointed in like manner as the governors of Madras and Bombay, and the governor-general's power of appointing a deputy-governor of Bengal was to cease. But unless and until a separate governor of the presidency was so constituted, the Governor-General in Council might appoint any servant of the Company who had been ten years in its service in India to be lieutenant-governor of such part of the territories under the Presidency of Fort William in Bengal as, for the time being, might not be under the Lieutenant-Governor of the North-Western Provinces. The project of constituting a new governorship was abandoned, and under the alternative power a lieutenant-governor of the Lower Provinces of Bengal (now commonly known as Bengal) was appointed in 1854. In October, 1905, a new province was formed by detaching the eastern part of Bengal from the rest of the province and uniting it with Assam under a lieutenant-governor. *See* Act VII of 1905. In 1912 Bihar, Chota Nagpur, and Orissa were constituted into a separate lieutenant-governorship, under the name 'Bihar and Orissa.' Assam was constituted a chief commissionership, and the rest of Bengal was constituted a governorship. (See above, p. 128, 129.)

The Indian Councils Act, 1909 (9 Edw. VII, c. 4), gives power to constitute executive councils for assisting a lieutenant-governor in the executive government of his province (s. 3), and requires a lieutenant-governor to appoint a vice-president of his council (s. 4). Section 3 (1) of the Act of 1909 is superseded as to Bengal by s. 1 of the Government of India Act, 1912 (2 & 3 Geo. V, c. 6), and is applied by s. 2 of the latter Act to Bihar and Orissa. An executive council has been appointed for Bihar and Orissa. (See above, p. 132.)

(*b*) The *lieutenant-governorship of the North-Western Provinces* was of earlier date than the lieutenant-governorship of Bengal, and was constituted under an Act of 1835 (5 & 6 Will. IV, c. 52). The Act of 1833 had directed the division of the Presidency of Bengal into

two distinct presidencies, one to be styled the Presidency of Fort William, the other the Presidency of Agra. The Act of 1835 authorized the Court of Directors to suspend these provisions, and directed that during the period of suspension the Governor-General in Council might appoint any servant of the Company who had been ten years in its service in India 'to the office of Lieutenant-Governor of the North-Western Provinces now under the Presidency of Fort William in Bengal,' a designation then appropriate, but since made inappropriate by the annexation of the Punjab. Power was also given to declare and limit the extent of the territories so placed under a lieutenant-governor, and of the authority to be exercised by him. The arrangements thus temporarily made by the Act of 1835 were continued by the Act of 1853 (16 & 17 Vict. c. 95, s. 15). A lieutenant-governor of the North-Western Provinces was first appointed by notification, dated February 29, 1836 (Calcutta Gazette for March 2, 1836, second supplement). This notification merely gave the lieutenant-governor the powers of the Governor of Agra, and those powers, as defined by 3 & 4 Will. IV, c. 85, did not include any of the powers of the Governor-General in Council under the Bengal Regulations. The power given by the Act of 1835 to define the authority of the lieutenant-governor was repealed by the Statute Law Revision Act, 1890.

The Lieutenant-Governor of the North-Western Provinces used to be also Chief Commissioner of Oudh. In 1901, when the North-West Frontier Province was constituted, the old North-Western Provinces were united with Oudh under a lieutenant-governor, and the two provinces were designated the United Provinces of Agra and Oudh. The union was confirmed by Act VII of 1902.

(*c*) Section 17 of the Act of 1853 (16 & 17 Vict. c. 95) enacts that:—'It shall be lawful for the Court of Directors of the said Company, under such direction and control, if and when they think fit, to constitute one new presidency within the territories subject for the time being to the government of the said Company, and to declare and appoint what part of such territories shall be subject to the government of such new presidency; and unless and until such new presidency be constituted as aforesaid, it shall be lawful for the said Court of Directors, under such direction and control as aforesaid, if and when they think fit, to authorize (in addition to such appointments as are hereinbefore authorized to be continued and made for the territories now and heretofore under the said Presidency of Fort William) the appointment by the said Governor-General in Council of a lieutenant-governor for any part of the territories for the time being subject to the government of the said Company, and to declare for what part of the said territories such lieutenant-governor shall be appointed, and the extent of his authority, and from time to time to revoke or alter any such declaration.'

The power of constituting a new presidency was not exercised, but that of appointing a new lieutenant-governor was exercised in 1859 by the appointment of Sir John Lawrence as Lieutenant-Governor

of the Punjab. The rule of construction applied to recent Acts of Parliament by s. 32 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), does not apply to the Act of 1853, and, apart from this, the power of appointing fresh lieutenant-governors under the Act of 1853 was probably exhausted by the constitution of a lieutenant-governorship of the Punjab. Further powers of constituting lieutenant-governorships are given by s. 46 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), but apparently are exercisable only when a new legislative council is established. See the note on s. 74 below. It was under these further powers that in 1897 Burma, in 1905 Eastern Bengal and Assam, and in 1912 Bihar and Orissa, were constituted lieutenant-governorships.

(*d*) See 21 & 22 Vict. c. 106, s. 29.

(*e*) This provision applies in terms only to the lieutenant-governors of Bengal and the North-Western Provinces (now united with Oudh), but its operation has been perhaps extended by the final words of 21 & 22 Vict. c. 106, s. 29.

(*f*) This sub-section reproduces s. 4 of the Act of 1854 (17 & 18 Vict. c. 77), which, however, applies in terms only to the two older lieutenant-governorships, the language being: 'It shall be lawful for the said Governor-General of India in Council, with the like sanction and approbation [i.e. of the Court of Directors and the Board of Control], from time to time to declare and limit the extent of the authority of the Governor in Council, Governor, or Lieutenant-Governor of Bengal, or of Agra, or the North-Western Provinces, who is now, or may be hereafter, appointed.' But a power to alter the limits of provinces is given by other enactments. See s. 57 below.

Power to place territory under authority of Governor-General in Council. [17 & 18 Vict. c. 77, s. 3.]

56. The Governor-General in Council may, with the approval of the Secretary of State, and by notification in the Gazette of India, take any part of British India under the immediate authority and management of the Governor-General in Council, and thereupon give all necessary orders and directions respecting the administration of that part, or otherwise provide for the administration thereof.

There is reason to believe that the enactment reproduced by this section was passed in consequence of a minute of Sir Barnes Peacock, forming an enclosure to a dispatch from the Government of India, dated July 16, 1852, and that it was mainly designed to give the Governor-General in Council the power which, according to Sir Barnes Peacock, he had not, of taking under his immediate executive control territory which formed part of some one of the presidencies. The section has been thus applied in various cases. Thus Arakan, which was originally annexed to Lower Bengal, was under this section taken into the hands of the Governor-General in Council and annexed to British Burma Foreign Department Notification, No. 30 (Political),

dated January 16, 1862). The province of Assam was constituted by removing it under this section from the lieutenant-governorship of Bengal, taking it under the Governor-General in Council, and constituting it a chief commissionership, the regulation district of Sylhet being subsequently added to it in the same manner (Home Department *Proclamation, No. 379, February 6, 1874; and Notification No. 380, of* same date; also Notification No. 2344 of September 12, 1874).

On the other hand, when the chief commissionerships of Oudh, the Central Provinces, and British (now Lower) Burma were constituted out of territories vested in the Governor-General in Council, the procedure was merely the issue of a resolution reciting the reasons for establishing the chief commissionership, defining the territories included in it, and specifying the staff appointed, no reference being made to any statute (Foreign Department letter to Chief Commissioner of Oudh, No. 12, dated February 4, 1856, and Foreign Department Resolution, No. 9, dated November 2, 1861, and No. 212, dated January 31, 1862). In the same way repeated changes have been made by executive orders in the government of the Andaman Islands.

The view taken by the Government of India is that the section does not apply to territories already included in a chief commissionership, this description of territory being, according to the practice of the Indian Legislature, always treated as already under the immediate authority and management of the Governor-General in Council, and therefore not capable of being placed under his authority and management by proclamation. A chief commissioner merely administers territory on behalf of the Governor-General in Council, and the Governor-General in Council does not divest himself of any of his powers in making over the local administration to a chief commissioner.

Although, however, the territory comprised in a chief commissionership may be technically under the immediate authority and management of the Governor-General in Council, yet the chief commissioner would *ordinarily be the local Government within the meaning of* Act X of 1897, s. 3 (29), and he is defined as a local Government by this Digest.

The result appears to be—

(1) The section must be used when it is desired to transfer the administration of territory from a governor in council, or a lieutenant-governor in council, or a lieutenant-governor to a chief commissioner;

(2) The section need not be used, and is not ordinarily used, when the administration of territory already under the administration of the Governor-General in Council is transferred from one local agency to another.

Power to transfer from a chief commissionership to a presidency or lieutenant-governorship has now been declared to exist by s. 4 (2) of the Government of India Act, 1912.

The transfer of territory under the section reproduced does not change

the law in force in the territory (see below, s. 58). Consequently supplemental legislation will usually be necessary.

Power to alter limits of provinces. [3 & 4 Will. IV. c. 85, s. 38. 28 & 29 Vict. c. 17, ss. 4, 5. 2 & 3 Geo. V. c. 6, s. 4 (2).]

57. The Governor-General in Council may, by notification in the Gazette of India, declare, appoint, or alter the boundaries of any of the provinces into which British India is for the time being divided, and distribute the territories of British India among the several provinces thereof in such manner as may seem expedient, subject to these qualifications, namely—

(1) An entire district may not be transferred from one province to another without the previous sanction of the Crown, signified by the Secretary of State in Council; and

(2) Any notification under this section may be disallowed by the Secretary of State in Council (*a*).

(*a*) This section is intended to reproduce the effect of the following enactments:

3 & 4 WILL. IV, c. 85, s. 38.

'It shall be lawful for the said Court of Directors, under the control by this Act provided, and they are hereby required, to declare and appoint what part or parts of any of the territories under the government of the said Company shall from time to time be subject to the government of each of the several presidencies now subsisting or to be established as aforesaid, and from time to time, as occasion may require, to revoke and alter, in the whole or in part, such appointment, and such new distribution of the same, as shall be deemed expedient.'

28 & 29 VICT. c. 17, ss. 4, 5.

'It shall be lawful for the Governor-General of India in Council from time to time to declare and appoint, by proclamation, what part or parts of the Indian territories for the time being under the dominion of Her Majesty shall be or continue subject to each of the presidencies and lieutenant-governorships for the time being subsisting in such territories, and to make such distribution and arrangement, or new distribution and arrangement, of such territories into or among such presidencies and lieutenant-governorships as to the said Governor-General in Council may seem expedient.

'Provided always, that it shall be lawful for the Secretary of State in Council to signify to the said Governor-General in Council his disallowance of any such proclamation. And provided further, that no such proclamation for the purpose of transferring an entire zillah or district from one presidency to another, or from one lieutenant-governorship to another, shall have any force or validity until the sanction of

Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the governor-general.'

The power given by the Indian Councils Act, 1861 (24 & 25 Vict. c. 67, s. 47), would appear from the context to be intended to be exercised for legislative purposes only, and is therefore reproduced below, s. 74. That given by the Act of 1865 (28 & 29 Vict. c. 17, s. 4) is wider. The Government of India were advised in 1878 that the Act of 1865 enables the Governor-General in Council to transfer territory from a chief commissionership to a presidency or lieutenant-governorship, but does not allow the converse. Parliament, it was thought, having enacted 17 & 18 Vict. c. 77, s. 3, must be taken to have been aware of the existence of territories called chief commissionerships, and to have deliberately omitted any mention of these in the Act of 1865. Power to transfer from a chief-commissionership to a presidency or lieutenant-governorship, or the converse, has now been declared to exist by s. 4 (2) of the Government of India Act, 1912.

On April 24, 1883, a proclamation was issued under 28 & 29 Vict. c. 17, s. 4, placing the villages of Shaikh-Othman and Imad, near Aden, under the Government of Bombay. The section has since then been applied to Perim.

58. An alteration in pursuance of the foregoing provisions of the mode of administration of any part of British India, or of the boundaries of any part of British India, does not affect the law for the time being in force in that part.

Saving as to laws. [17 & 18 Vict. c. 77, s. 3. 24 & 25 Vict. c. 67, s. 47.]

The power to take territory under the immediate authority of the Governor-General in Council (reproduced by s. 56 above) is qualified by the proviso that no law or regulation in force at any such time as regards any such portions of territory shall be altered or repealed except by law or regulation made by the Governor-General of India in Council (17 & 18 Vict. c. 77, s. 3). That proviso does not apply to chief commissionerships which have legislative councils (2 & 3 Geo. V, c. 6, s. 3).

The power to fix the limits of a province given by 24 & 25 Vict. c. 67, s. 47, and reproduced by s. 57 above, is qualified by a similar proviso, 'that any law or regulation made by the Governor or Lieutenant-Governor in Council of any presidency, division, province, or territory shall continue in force in any part thereof which may be severed therefrom by any such proclamation, until superseded by law or regulation of the Governor-General in Council, or of the governor, or Lieutenant-Governor in Council of the presidency, division, province, or territory to which such parts have become annexed.'

The power exercisable under 28 & 29 Vict. c. 17, s. 4, is not qualified by a similar proviso.

59. The Governor of Bengal in Council, the Governor of Madras in Council, and the Governor of Bombay in Council,

Power to extend boun-

daries of presidency towns. [55 Geo. III, c. 84, s. 1. 2 & 3 Geo. V, c. 6, s. 1 (2).]

may, with the approval of the Secretary of State in Council, extend the limits of the towns of Calcutta, Madras, and Bombay respectively; and any Act of Parliament, letters patent, charter, law, or usage conferring jurisdiction, power, or authority within the limits of those towns respectively will have effect within the limits as so extended.

This power, which was given by an Act of 1815, appears to be still in force, and not to be superseded by the later enactments reproduced above.

PART VI.

INDIAN LEGISLATION.

Legislation by Governor-General in Council.

Additional members of council for legislative purposes. [24 & 25 Vict. c. 67, ss. 9, 10, 11. 33 & 34 Vict. c. 3, s. 3. 9 Edw. VII, c. 14, ss. 1, 6.]

60.—(1) For the purposes of legislation, the governor-general nominates and various bodies elect persons resident in India to be additional members of his council (*a*).

(2) The maximum number of the additional members of the governor-general's council is such as to the governor-general from time to time seems expedient, but must be not greater than sixty (*b*).

(3) At least one-half of the additional members of the governor-general's council must be persons not in the civil or military service of the Crown in India, and if any such additional member accepts office under the Crown in India his seat as an additional member thereupon becomes vacant.

(4) The term of office of an additional member of the governor-general's council is three years (*c*).

(5) When and so long as the governor-general and his council are in a province administered by a lieutenant-governor or chief commissioner, that lieutenant-governor or chief commissioner is an additional member of the council, in excess, if necessary, of the maximum number hereinbefore specified of additional members.

(6) The additional members of the governor-general's council are entitled to be present at the legislative meetings of the council, and at no other.

(7) The Governor-General in Council must, with the approval of the Secretary of State in Council, make regulations as to the conditions under which and manner in which nominations and elections may be made in accordance with this section, and prescribe the manner in which such regulations are to be carried into effect (*d*).

(*a*) The Legislative Council of the Government of India is an expansion of the Governor-General's executive council. Its cumbrous statutory description is 'the Governor-General in Council at meetings for the purpose of making laws and regulations,' but it is referred to in the Indian Councils Act, 1909, and is usually described, as the Legislative Council of the Governor-General. It was constituted by the Indian Councils Act, 1861, in supersession of the legislative body established under the Act of 1853, and its constitution was modified by the Indian Councils Act, 1892 (55 & 56 Vict. c. 14), and again by the Act of 1909 and the regulations made under it. The qualification of residence in India was added by the Act of 1892 and continued by the Act of 1909.

(*b*) The number under the Act of 1861 was not less than six nor more than twelve. It was increased by the Act of 1892 and again by the Act of 1909.

(*c*) The term is ordinarily three years; but official members and those nominated as experts hold office for three years or such shorter period as the Governor-General may fix, and members elected to fill casual vacancies serve only for the unexpired portion of their predecessors' term of office. See Regulation X of 1912, made under the Indian Councils Act, 1909.

(*d*) As to the effect of these regulations, see above, p. 112 and Appendix V.

Times and places of legislative meetings. [24 & 25 Vict. c. 67, s. 17.]

61.—(1) The legislative meetings of the governor-general's council are held at such times and places as the Governor-General in Council appoints (*a*).

(2) Any such meeting may be adjourned by the governor-general in council, or by the person presiding at the meeting if so authorized by the governor-general in council (*b*).

(*a*) In practice the meetings are held at Delhi and Simla. There are no legislative sessions, but meetings are held whenever it is considered convenient. A Bill remains in life until it is passed or withdrawn, or is treated under the rules of business as dropped. All the Acts passed in any one calendar year are numbered in consecutive order (Act I of 1897 and so on).

(*b*) It would be more convenient to make the power of adjournment exercisable by the person presiding, without further authority.

Constitution of legislative meetings of council. [24 & 25 Vict. c. 67, ss. 7, 15. 9 Edw. VII, c. 4, s. 4.]

62.—(1) At every legislative meeting of the governor-general's council the governor-general, or the president or vice-president of the governor-general's council (*a*), or some other ordinary member of the governor-general's council, and at least fifteen additional members of that council must be present (*b*).

(2) At every such meeting the governor-general, or in his absence the president of the governor-general's council, or if there is no president, or if the president is absent, the vice-president, or, if the vice-president is absent, the senior ordinary member of the governor-general's council present at the meeting presides.

(3) The person presiding at a legislative meeting of the governor-general's council has a second or casting vote.

(*a*) See s. 45.

(*b*) The quorum at these legislative meetings is now fixed by one of the regulations (Reg. XIII) of November 14, 1912, made under the Indian Councils Act, 1909, at fifteen additional members.

Legislative power of Governor-General in Council. [3 & 4 Will. IV, c. 85, ss. 46, 51, 73. 24 & 25 Vict. c. 67, s. 22. 28 & 29 Vict. c. 17, ss. 1, 2. 32 & 33 Vict. c. 98, s. 1. 33 & 34 Vict. c. 3, s. 2. 47 & 48 Vict. c. 38, ss. 2, 3, 5. 55 & 56 Vict. c. 14, s. 3.]

63.—(1) The Governor-General in Council has power at legislative meetings to make laws (*a*)—

(*a*) for all persons, for all courts, and for all places and things within British India (*b*); and

(*b*) for all British subjects of His Majesty and servants of the Government of India within other parts of India (*c*); and

(*c*) for all persons being native Indian subjects of His Majesty or native Indian officers, soldiers, or followers in His Majesty's Indian forces, when respectively in any part of the world, whether within or without His Majesty's dominions (*d*); and

(*d*) for all persons employed or serving in or belonging to the Royal Indian Marine (*e*); and

(*e*) for repealing or altering any laws or regulations which are for the time being in force in any part of British India [or apply to any persons for whom the Governor-General in Council has power to make laws] (*f*).

(2) Provided that the Governor-General in Council has not power to make any law repealing or affecting (*g*)— 3 & 4 Will. IV, c. 85. 16 & 17 Vict. c. 95 17 & 18 Vict. c. 77. 21 & 22 Vict. c. 106. 22 & 23 Vict. c. 46. 24 & 25 Vict. c. 67.

(*a*) any provisions of the Government of India Act, 1833, except sections eighty-four and eighty-six of that Act, or any provisions of the Government of India Act, 1853, or the Government of India Act, 1854, or the Government of India Act, 1858, or the Government of India Act, 1859, or the Indian Councils Act, 1861 (*h*); or

(*b*) any Act of Parliament passed after the year one thousand eight hundred and sixty, and extending to British India (*i*); or

(*c*) any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the government of India; or

(*d*) the Army Act (*j*), or any Act amending the same;

and has not power to make any law affecting the authority of Parliament (*k*), or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom (*l*), or the sovereignty or dominion of the Crown over any part of British India (*m*).

(3) The Governor-General in Council has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any court, other than a high court within the meaning of this Digest (*n*), to sentence to the punishment of death any of His Majesty's natural-born subjects born in Europe, or the children of such subjects, or abolishing any high court within the meaning of this Digest (*o*).

(4) Any law made in accordance with this section controls and supersedes any other law or regulation repugnant thereto which may have been previously made by any authority in India (*p*).

(5) A law made in accordance with this section for the

Royal Indian Marine does not apply to any offence unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of Indian waters, that is to say, the high seas between the Cape of Good Hope on the West and the Straits of Magellan on the East (*q*), and any territorial waters between those limits.

(6) The punishments imposed by any such law as last aforesaid for offences must be similar in character to, and not in excess of, the punishments which may at the time of making the law be imposed for similar offences under the Acts relating to His Majesty's Navy, except that in the case of persons other than Europeans or Americans imprisonment for any term not exceeding fourteen years or transportation for life or any less term may be substituted for penal servitude.

(*a*) The legislative powers of the Governor-General in Council are derived from a series of enactments.

Under s. 73 of the Government of India Act, 1833 (3 & 4 Will. IV, c. 85), 'it is lawful for the said Governor-General in Council from time to time to make articles of war for the government of the native officers and soldiers in the military service of the Company, and for the administration of justice by courts-martial to be holden on such officers and soldiers, and such articles of war from time to time to repeal or vary and amend; and such articles of war shall be made and taken notice of in the same manner as all other the laws and regulations to be made by the said Governor-General in Council under this Act, and shall prevail and be in force, and shall be of exclusive authority over all the native officers and soldiers in the said military service, to whatever presidency such officers and soldiers may belong, or wheresoever they may be serving: Provided nevertheless, that until such articles of war shall be made by the said Governor-General in Council, any articles of war for or relating to the government of the Company's native forces, which at the time of this Act coming into operation shall be in force and use in any part or parts of the said territories, shall remain in force.'

By s. 22 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), the Governor-General in Council was empowered at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions therein contained, 'to make laws and regulations for repealing, amending, or altering any laws or regulations whatever now in force or hereafter to be in force in the Indian territories now under the dominion of Her Majesty, and to make laws and regulations for all persons, whether British or native, foreigners or others, and for

all courts of justice whatever, and for all places and things whatever within the said territories, and for all servants of the Government of India within the dominions of princes and States in alliance with Her Majesty; and the laws and regulations so to be made by the Governor-General in Council shall control and supersede all laws and regulations in anywise repugnant thereto which shall have been made prior thereto by the governors of the presidencies of Fort Saint George and Bombay respectively in Council, or the Governor or Lieutenant-Governor in Council of any presidency or other territory for which a council may be appointed, with power to make laws and regulations, under and by virtue of this Act: Provided always, that the said Governor-General in Council shall not have the power of making any laws or regulations which shall repeal or in any way affect any of the provisions of this Act:

'Or any of the provisions of the Government of India Act, 1833, and of the Government of India Act, 1853, and of the Government of India Act, 1854, which after the passing of this Act shall remain in force:

'Or any provisions of the Government of India Act, 1858, or of the Government of India Act, 1859:

'Or of any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India:

'Or of the Acts for punishing mutiny and desertion in Her Majesty's Army or in Her Majesty's Indian forces respectively; but subject to the provision contained in the Government of India Act, 1833, s. 73, respecting the Indian articles of war:

'Or any provisions of any Act passed in this present session of Parliament, or hereafter to be passed, or anywise affecting Her Majesty's Indian territories, or the inhabitants thereof:

'Or which may affect the authority of Parliament, or the constitution and rights of the East India Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the Crown over any part of the said territories.'

By s. 1 of the Government of India Act, 1865 (28 & 29 Vict. c. 15), the Governor-General of India was empowered, at meetings for the purpose of making laws and regulations, to make laws and regulations for all British subjects of Her Majesty within the dominions of princes and States in India in alliance with Her Majesty, whether in the service of the Government of India or otherwise.

By s. 1 of the Indian Councils Act, 1869 (32 & 33 Vict. c. 98), the Governor-General of India in Council was empowered, at meetings for the purpose of making laws and regulations, to make laws and regulations for all persons being native Indian subjects of Her Majesty without and beyond as well as within the Indian territories under the dominions of Her Majesty. And under s. 3 of the same Act a law or

regulation so made is not to be invalid by reason only of its repealing or affecting ss. 81, 82, 83, 84, 85, or 86 of the Government of India Act, 1833. Sections 81 to 83 and 85 of the Act of 1833 were repealed by the Statute Law Revision Act, 1890 (53 & 54 Vict. c. 33).

The Indian Marine Service Act, 1884 (47 & 48 Vict. c. 38), gives power to make laws for the Indian Marine Service.

Section 45 of the Government of India Act, 1833 (3 & 4 Will. IV, c. 85), enacts that all laws and regulations made under that Act, so long as they remain unrepealed, shall be of the same force and effect within and throughout the Indian territories as any Act of Parliament would or ought to be within the same territories, and shall be taken notice of by all courts of justice whatsoever within the same territories in the same manner as any public Act of Parliament would or ought to be taken notice of, and it shall not be necessary to register or publish in any court of justice any laws or regulations made by the said Governor-General in Council. This enactment has not been repealed, but the first part of it applies in terms only to laws made under the powers given by the Act of 1833, and is not reproduced in the Act of 1861, or expressly *made* applicable to laws made under the powers given by that Act. Its repetition or application was probably considered unnecessary in 1861. The exemption from the obligation to register, which is in general terms, was enacted with reference to the questions which had arisen as to the necessity for registering enactments made under various statutory powers conferred before 1833.

The powers of legislation reproduced in this Digest are not exhaustive. Under various Acts of Parliament the Indian Legislature, like other British legislatures with limited powers, has power to make laws on particular subjects with more extensive operation than laws made under its ordinary powers. See e.g. the Extradition Act, 1870 (33 & 34 Vict. c. 52, s. 18), the Slave Trade Act, 1876 (39 & 40 Vict. c. 46, s. 2), the Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69, s. 32), the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), the Colonial Probates Act, 1892 (55 & 56 Vict. c. 6, s. 1), and the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60, ss. 264, 368, 735, 736).

The leading case on the general powers of the Indian Legislature is *The Queen* v. *Burah* (1878), L. R. 3 App. Cas. 889. The Indian Legislature had passed an Act (XXII of 1869) purporting:—First, to remove the Garo Hills from the jurisdiction of the ordinary civil and criminal courts, and from the law applicable to those courts, and, secondly, to vest the administration of civil and criminal justice in those territories in officers appointed by the Lieutenant-Governor of Bengal. The Act was to come into operation on a date to be fixed by the lieutenant-governor. By the ninth section the lieutenant-governor was empowered, by notification in the Calcutta Gazette, to extend all or any of the provisions of the Act to certain neighbouring mountainous districts. The validity of the Act, and particularly of the ninth section, was questioned, but was maintained by the Judicial Committee of the Privy Council, who held (1) that the Act was not inconsistent with the

Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), or with the Charter of the Calcutta High Court; (2) that it was in its general scope within the legislative powers of the Governor-General in Council; (3) that the ninth section was conditional legislation and not a delegation of legislative power, and (4) that where plenary powers of legislation exist as to particular subjects, whether in an imperial or in a provincial legislature, they may be well exercised, either absolutely or conditionally; in the latter case leaving to some external authority the time and manner of carrying its legislation into effect, and the area over which it is to extend.

Lord Selborne, in delivering the judgement of the Judicial Committee, expressed himself as follows:

'The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established courts of justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so is by looking to the terms of the instrument, by which affirmatively the legislative powers were created, and by which negatively they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would of course be included any Act of the Imperial Parliament at variance with it), it is not for any court of justice to inquire further, or to enlarge constructively those conditions and restrictions.'

The same principles have been since laid down with respect to colonial legislatures in the case of *Powell* v. *Apollo Candle Company* (1885), 10 App. Cas. 282. See also *Harris* v. *Davies* (1885), 10 App. Cas. 279, and *Musgrove* v. *Chun Teeong Toy*, [1891] L. R. A. C. 274 (the Chinese immigration case).

On the powers of the Australian Commonwealth Parliament to compel attendance of witnesses and production of documents see *Attorney-General of the Commonwealth of Australia* v. *The Colonial Sugar Refining Company and others*, December 17, 1913.

In *Sprigg* v. *Sigcau*, [1897] A. C. 238, it was held on appeal from the Cape that a power for the governor to add to the existing laws already proclaimed and in force in Pondoland such laws as he should from time to time by proclamation declare to be in force in those territories, did not authorize the issue of a proclamation for the arrest and imprisonment of a particular chief.

(*b*) The expression used in the Indian Councils Act, 1861, is 'the Indian territories *now* under the dominion of Her Majesty.' But s. 3 of the Indian Councils Act, 1892 (55 & 56 Vict. c. 14), explains that

this is to be read as if the words 'or hereafter' were inserted after 'now.' Consequently it is represented by British India, which means the territories for the time being constituting British India (see s. 124 and the notes thereon).

(*c*) The Act of 1861 gave power to make laws 'for all servants of the Government of India within the dominions of princes and States in alliance with Her Majesty.' The Act of 1865 gave power to make laws 'for all British subjects of Her Majesty within the dominions of princes or States *in India* in alliance with Her Majesty, whether in the service of the Government of India or not.' Consequently it may be argued that the power to make laws for servants of the Government of India, as distinguished from British subjects generally, extends beyond the Native States of India. But, having regard to the sense in which the phrase 'princes and States in alliance with Her Majesty' is commonly used in Acts relating to India, it seems safer to adopt the narrower construction and to treat the expressions in the Act of 1861 and in the Act of 1865 as synonymous.[1]

The expression 'Government of India' is defined by the Indian General Clauses Act (X of 1897), in terms which would exclude the local Governments. But this definition does not apply to the construction of an English Act of Parliament, and the expression 'servants of the Government of India' in the Act of 1861 would doubtless be held to include all servants of the Crown employed by or under the Government of India, whether directly employed by the Government of India in its narrower sense, or by or under a local Government, and whether British subjects or not. See the definition of 'Government' in Act X of 1897, s. 3 (21).

It has been argued that the expression 'British subjects of Her Majesty' was used in the Act of 1865 in its older and narrower sense, as not including persons of Asiatic descent. If so, there would be no power under this enactment to legislate for natives of Ceylon in the Nizam's territories. In practice, however, the questions referred to in this note do not cause difficulty because a wider power to legislate for persons and things outside British India can be exercised under the Foreign Jurisdiction Act. See below, Chapter V.

(*d*) The Indian Articles of War are contained in Act VIII of 1911. The words 'or followers' do not occur in the Act of 1833, but their insertion seems to be justified by the Army Act, which, after a saving for Indian military law respecting officers or soldiers or followers in Her Majesty's Indian forces, being natives of India, enacts (s. 180 (2) (*b*)) that, 'For the purposes of this Act, the expression "Indian military law" means the Articles of War or other matters made, enacted, or in force, or which may hereafter be made, enacted, or in force, under the authority of the Government of India; and such

[1] On general principles, there would seem to be no objection to legislation conferring jurisdiction in respect of an offence committed by a servant of the Crown in any foreign country, where the offence consists of *a breach of his duty to the Crown*.

articles or other matters shall extend to such native officers, soldiers, and followers, wherever serving.'

(*e*) The East India Company used to keep a small naval force, known first as the Bombay Marine, and afterwards as the Indian Navy. This force was abolished in 1863, when it was decided that the Royal Navy should undertake the defence of India against serious attack by sea, and should also provide for the performance of the duties in the Persian Gulf which had been previously undertaken by the Indian Navy. After the abolition of the Indian Navy, two small services, the Bengal Marine and the Bombay Marine, came into existence for local purposes, but were found to be expensive and inefficient, and accordingly the Government of India amalgamated them into the force now known as the Indian Marine. According to the preamble to the Indian Marine Service Act, 1884 (47 & 48 Vict. c. 38), this force was 'employed under the direction of the Governor-General in Council for the transport of troops, the guarding of convict settlements, the suppression of piracy, the survey of coasts and harbours, the visiting of lighthouses, the relief of distressed or wrecked vessels, and other local objects,' and was maintained out of the revenues of India.

The ships on this establishment were Government ships, but did not form part of the Royal Navy, and consequently did not fall within the provisions either of the Merchant Shipping Acts on the one hand, or of the Naval Discipline Act (29 & 30 Vict. c. 109) on the other, or of any corresponding Indian enactments. They were in fact in the same kind of position as some of the vessels employed by the Board of Trade and by the Post Office in British waters. Under these circumstances it was thought expedient that the Governor-General in Council should have power to make laws for the maintenance of discipline in their service; and, accordingly, the Indian Marine Service Act, 1884, was passed for this purpose. It enabled the Governor-General in Council, at legislative meetings, to make laws for all persons employed or serving in or belonging to Her Majesty's Indian Marine Service, but the punishments were to be of the same character as those under the Navy Acts, and the Act was not to operate beyond the limits of Indian waters as defined by the Act, i.e. the old limits of the East India Company's charter. The reasons for the limitation to Indian waters were, doubtless, that it was desirable to maintain the local character of the objects for which, according to the preamble, the establishment was maintained; that if, under exceptional circumstances, a ship belonging to the establishment was sent to English waters, on transport service or otherwise, no practical difficulties in maintaining discipline were likely to arise; and that it was not desirable to give to these ships and to their officers, outside Indian waters, their proper sphere of operations, a status practically equivalent to that of the Royal Navy. The officers of the Indian Marine Service are appointed by the Governor-General in Council, but do not hold commissions from the King, and consequently cannot exercise powers of command over officers and men of the Royal Navy. The ships are

unarmed, and therefore are practically of no use for the suppression of piracy. In time of war, however, the King may, by Proclamation or Order in Council, direct that any vessel belonging to the Indian Marine Service, and the men and officers serving therein, shall be under the command of the senior naval officer of the station where the vessel is, and while the vessel is under such command, it is to be deemed, to all intents, a vessel of war of the Royal Navy, and the men and officers are to be under the Naval Discipline Act, and subject to regulations issued by the Admiralty with the concurrence of the Secretary of State for India in Council (47 & 48 Vict. c. 38, s. 6).

Under the power conferred by the Indian Marine Service Act, 1884, the Indian Legislature passed the Indian Marine Act, 1887 (Act XIV of 1887), which established for the Indian Marine Service a code of discipline corresponding to that in force for the Royal Navy, and declared that Chapter VII of the Indian Penal Code, 'as to offences relating to the Army and Navy,' was to apply as if Her Majesty's Indian Marine Service were comprised in the Navy of the Queen (s. 79).

On the relations between the Royal Navy and the Indian Marine Service, see the evidence given by Sir John Hext and others in the First Report of the Royal Commission on the administration of the expenditure of India (1896).

(*f*) The words 'or apply to any persons for whom the Governor-General in Council has power to make laws' are not in the Act of 1861, but seem to be implied by the context.

(*g*) 'Affecting' would probably be construed as equivalent to 'altering'.

(*h*) The short titles given by the Short Titles Act, 1896, are substituted in the text for the longer titles used in the Act of 1861. It will be observed that, subject to the exceptions here specified, the Parliamentary enactments relating to India may be repealed or altered by Indian legislation. This power is saved by the language used in producing these enactments in the Digest. See e.g. ss. 101, 103, 105.

(*i*) The language of the Act of 1861 is: 'any provisions of any Act passed in this present session of Parliament, or hereafter to be passed, in anywise affecting Her Majesty's Indian territories, or the inhabitants thereof.' See *R.* v. *Meares*, 14 Bengal Law Reports, 106, 112.

(*j*) 44 & 45 Vict. c. 58. Under s. 136 of this Act as amended by s. 4 of the Army (Amendment) Act, 1895 (58 & 59 Vict. c. 7), the pay of an officer or soldier of Her Majesty's regular forces must be paid without any deduction other than the deductions authorized by this or by any other Act, or by any Royal warrant for the time being, or by any law passed by the Governor-General of India in Council. Thus the Indian Legislature has power to authorize deductions from military pay, but this power can hardly be treated as power to amend the Army Act.

(*k*) After these words followed in the Act of 1861 the words 'or the constitution and rights of the East India Company.' It will be remembered that the Company was not formally dissolved until 1874.

(*l*) 'Whereon may depend . . . United Kingdom.' These words are somewhat indefinite, and a wide meaning was attributed to them by Mr. Justice Norman in the case of *In the matter of Ameer Khan*, 6 Bengal Law Reports, 392, 456, 459. In this case, which turned on the validity of an arrest under Regulation III of 1818, the powers of the Indian Legislature under successive charters and enactments were fully discussed.

(*m*) Are the words 'or the sovereignty,' &c., to be connected with 'whereon may depend,' or with 'affecting?' Probably the latter. If so, legislation to authorize or confirm the cession of territory is placed by these words beyond the powers of the Indian Legislature. The power of the Crown to cede territory in India and elsewhere was fully discussed in the Bhaunagar case, *Damodhar Khan* v. *Deoram Khanji*, I. L. R. 1 Bom. 367, L. R. 2 App. Cas. 332, where the Judicial Committee, without expressly deciding the main question at issue, clearly intimated that in their opinion the Crown possessed the power. This opinion was followed by the high court at Allahabad in the case of *Lachmi Narayan* v. *Raja Pratab Singh*, I. L. R. 2 All. 1. See further, Sir H. S. Maine's Minute of 1868 on the Rampore Cession case (No. 79), and the debates in Parliament in 1890 on the Anglo-German Agreement Bill, by which the assent of Parliament was given to the agreement for the cession of Heligoland, and in 1904 (June 1) on the Anglo-French Convention Bill.

(*n*) i.e. a chartered high court. See s. 124.

(*o*) This reproduces 3 & 4 Will. IV, c. 85, s. 46, and is the reason why the sanction of the Secretary of State in Council is recited in the preamble to the Punjab Courts Act, 1884 (XVIII of 1884, printed in the Punjab Code).

(*p*) 'Any authority in India.' The words of the Act are: 'the Governors of the Presidencies of Fort St. George and Bombay respectively in Council, or the Governor or Lieutenant-Governor in Council of any presidency or other territory for which a council may be appointed, with power to make laws and regulations by virtue of this Act.'

(*q*) These were the old limits of the East India Company's charter.

Business at legislative meetings. [24 & 25 Vict. c. 67, s. 19. 9 Edw. VII, c. 4, s. 5.]

64.—(1) (*a*) At a legislative meeting of the governor-general's council no business shall be transacted other than the consideration of measures introduced [or proposed to be introduced] (*b*) into the Council for the purpose of enactment, or the alteration of rules for the conduct of business at legislative meetings (*c*).

(2) At a legislative meeting of the governor-general's council no motion shall be entertained other than a motion for leave to introduce a measure into the council for the

purpose of enactment, or having reference to a measure introduced [or proposed to be introduced] (*b*) into the council for that purpose, [or having reference to some rule for the conduct of business] (*b*).

(3) It shall not be lawful, without the previous sanction of the governor-general, to introduce at any legislative meeting of the governor-general's council any measure affecting—

(*a*) The public debt or public revenues of India or imposing any charge on the revenues of India (*d*) ; or

(*b*) The religion or religious rites and usages of any class of His Majesty's subjects in India ; or

(*c*) The discipline or maintenance of any part of His Majesty's military or naval forces ; or

(*d*) The relations of the Government with foreign princes or States.

(4) Provided that the Governor-General in Council must, with the sanction of the Secretary of State in Council, make rules authorizing at any legislative meeting of the governor-general's council the discussion of the annual financial statement of the Governor-General in Council and of any matter of general public interest and the asking of questions, but under such conditions and restrictions as may be in the said rules prescribed. Rules made under this sub-section shall not be subject to alteration or amendment at legislative meetings of the council (*e*).

(*a*) As to the object with which this section was framed, see par. 24 of Sir C. Wood's dispatch of August 9, 1861.

(*b*) The words ' or proposed to be introduced ' and ' or having reference to some rule for the conduct of business ' are not in the Act of 1861, but represent the existing practice.

(*c*) Section 5 of the Indian Councils Act, 1909 (9 Edw. VII, c. 4), requires rules to be made for the conduct of non-legislative business at meetings of the Governor-General's legislative council, and the range of business at these meetings has been materially extended by the rules so made. See Chapter I.

(*d*) The words ' or imposing any charge on the revenues of India ' might perhaps be omitted as unnecessary.

(e) This proviso reproduces the alterations made by the Act of 1909. Under the existing rules the financial statement must be explained in council every year, and a printed copy must be given to every member. Any member may move resolutions on the financial statement, the member in charge has the right of reply, and the discussion is closed by any observations the member in charge or the president may think fit to make. At a later stage the budget is brought forward for discussion, but no resolutions may then be moved.

Assent of governor-general to Acts. [24 & 25 Vict. c. 67, s. 20.]

65.—(1) When an Act has been passed at a legislative meeting of the governor-general's council, the governor-general, whether he was or was not present in council at the passing thereof, may declare that he assents to the Act, or that he withholds assent from the Act, or that he reserves the Act for the signification of His Majesty's pleasure thereon.

(2) An Act of the Governor-General in Council has not validity until the governor-general has declared his assent thereto, or, in the case of an Act reserved for the signification of His Majesty's pleasure, until His Majesty has signified his assent to the governor-general through the Secretary of State in Council, and that assent has been notified in the Gazette of India.

Power of Crown to disallow Acts. [24 & 25 Vict. c. 67, s. 21.]

66.—(1) When an Act of the Governor-General in Council has been assented to by the governor-general he must send to the Secretary of State an authentic copy thereof.

(2) It is lawful for His Majesty to signify through the Secretary of State in Council his disallowance of any such Act.

(3) Where the disallowance of any such Act has been so signified, the governor-general must forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, becomes void accordingly (a).

(a) When an Act has been passed by the Governor-General in Council the Secretary of State usually sends a dispatch intimating that the Act has been considered in council and will be left to its operation. But this formal expression of approval is not essential to the validity of the Act.

Rules for conduct of business. [24 & 25 Vict. c. 67, s. 18.]

67. The Governor-General in Council may at legislative meetings of the governor-general's council, subject to the assent of the governor-general, make rules for the conduct of business at legislative meetings of the council, and for prescribing the mode of promulgation and authentication of Acts made at such meetings; but any such rule may be disallowed by the Secretary of State in Council, and if so disallowed has no effect.

A bill, when introduced, is published in the official gazettes in English and the local vernacular, with a 'Statement of Objects and Reasons,' and a similar course is usually adopted after every subsequent stage of the bill at which important amendments have been made. Thus a bill as amended in committee is published with the report of the committee explaining the nature of, and reasons for the amendment. The draft of a bill is in some cases published for the purpose of eliciting opinion, before its introduction into the council.

When a bill is introduced, or on some subsequent occasion, the member in charge of it makes one or more of the following motions:

(1) That it be referred to a select committee; or

(2) That it be taken into consideration by the council, either at once or on some future day to be then mentioned; or

(3) That it be circulated for the purpose of eliciting opinion thereon.

The usual course is to refer a bill after introduction to a select committee. It is then considered in council after it is reported by the committee, with or without amendments, and is passed, either with or without further amendments made by the council.

Power to make regulations. [33 Vict. c. 3, ss. 1, 2.]

68.—(1) (*a*) The local Government (*b*) of any part of British India to which this section for the time being applies may propose to the Governor-General in Council the draft of any regulation for the peace and government of that part, with the reasons for proposing the regulation.

(2) Thereupon the Governor-General in Council may take any such draft and reasons into consideration, and when any such draft has been approved by the Governor-General in Council and assented to by the governor-general (*c*), it must be published in the Gazette of India, and in the local official gazette, if any, and thereupon has the like force of law and is subject to the like disallowance as if it had been made by the Governor-General in Council at a legislative meeting.

(3) The governor-general must send to the Secretary of

State an authentic copy of every regulation to which he has assented under this section.

(4) The Secretary of State may by resolution in council apply this section to any part of British India as from a date to be fixed in the resolution, and withdraw the application of this section from any part to which it has been applied (*d*).

(*a*) This power was conferred by the Act of 1870, with the object of providing a more summary legislative procedure for the more backward parts of British India. The enactment conferring the power was passed in consequence of a dispatch from the Government of India drafted by Sir H. S. Maine. (See Minutes by Sir H. S. Maine, Nos. 67, 69.) The regulations made under it must be distinguished from the old Madras, Bengal, and Bombay regulations, which were made before 1835 by the Governments of the three presidencies, and some of which are still in force.

(*b*) 'Local Government' is defined by s. 124.

(*c*) It will be observed that the Governor-General in Council cannot amend the draft.

(*d*) The Indian Statute Book has from the earliest times contained 'deregulationizing' enactments, i.e. enactments barring, completely or partially, the application in the more backward and less civilized parts of the country of the ordinary law, which was at first contained in the old 'regulations.' These enactments took varied and sometimes very complicated forms, so that, in course of time, doubts arose, and it became occasionally a matter of considerable difficulty to ascertain what laws were and what were not in force in the different 'deregulationized' tracts. The main object of the Scheduled Districts Act, 1874 (XIV of 1874), was to provide a method of removing these doubts by means of notifications to be issued by the Executive Government. The preamble refers to the fact that 'various parts of British India had never been brought within, or had from time to time been removed from, the operation of the general Acts and regulations, and the jurisdiction of the ordinary Courts of Judicature;' that 'doubts had arisen in some cases as to which Acts or regulations were in force in such parts, and in other cases as to what were the boundaries of such parts;' and that 'it was expedient to provide readier means for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein.' The Act then proceeds to specify and constitute a number of deregulationized tracts as 'scheduled districts,' to give the power of declaring by notification what enactments are, or are not, actually in force in any scheduled district, and to provide for extending by notification to any 'scheduled district,' with or without modifications or restrictions, any enactment in force in any part of British India at the date of the extension. The Act also gives powers to appoint officers for the administration of a scheduled district, and to regulate their procedure and the exercise of

their powers therein, and also to settle questions as to the boundaries of any such tract. A large number of declaratory and extending notifications have been issued under the Act.

Every district to which 33 Vict. c. 3, s. 1 (reproduced by this section of the Digest), is made applicable thereupon becomes by virtue of s. 1 of the Indian Scheduled Districts Act, 1874 (XIV of 1874), a scheduled district within the meaning of that Act and of the Indian General Clauses Act, 1897 (X of 1897, s. 3 (49)).

The Scheduled Districts Act, 1874, is immediately followed in the Indian Statute Book by the Laws Local Extent Act, 1874 (XV of 1874), the object of which is to remove doubts as to the application of certain enactments to the whole or particular parts of British India. This Act also uses the expression 'scheduled districts,' but in a sense which has in the course of time become different from that in which the term is used in the Scheduled Districts Act. The lists of scheduled districts appended to the two Acts were originally identical, but since 1874 Acts have been passed which have amended or partially repealed the list in Act XIV, but have not in all cases made corresponding alterations in the list annexed to Act XV. Moreover, certain regions not included in the original schedule have, by reason of the application to them of 33 Vict. c. 3, s. 1, become *ipso facto* scheduled districts. The Legislative Department of the Government of India has published lists of the 'territories which are "deregulationized," "scheduled," and subject to the statute 33 Vict. c. 3, s. 1, respectively.'

Power to make ordinances in cases of emergency. [24 & 25 Vict. c. 67, s. 23.]

69. The governor-general may in cases of emergency make and promulgate ordinances for the peace and good government of British India, or any part thereof, and any ordinance so made has, for such period not exceeding six months from its promulgation as may be declared in the notification, the like force of law to a law made by the Governor-General in Council at a legislative meeting; but the power of making ordinances under this section is subject to the like restrictions as the power of making laws at legislative meetings; and any ordinance made under this section is subject to the like disallowance as a law passed at a legislative meeting, and may be controlled or superseded by any such law.

The power given by this section has rarely been exercised, and should be called into action only on urgent occasions. The reasons for a resort to it should always be recorded, and these, together with the Ordinance itself, should be submitted without loss of time to His Majesty's Government.

Local Legislatures.

Meaning of local legislatures. [See 55 & 56 Vict. c. 14, s. 6.]

70. The Governor of Bengal in Council, the Governor of Madras in Council, the Governor of Bombay in Council, the Lieutenant-Governors in Council of the United Provinces of Agra and Oudh, the Punjab, Burma, and Bihar and Orissa, the Chief Commissioners in Council of Assam and the Central Provinces, and any local legislature which may be hereafter constituted in pursuance of the Indian Councils Act, 1861, are local legislatures within the meaning of this Digest.

24 & 25 Vict. c. 67.

This section follows substantially the definition of 'local legislature' in the Indian Councils Act, 1892 (55 & 56 Vict. c. 14, s. 6), with the modifications required by the constitution of local legislatures since its passing.

Constitution of legislative council in Bengal, Madras, and Bombay. [24 & 25 Vict. c. 67, ss. 29, 30. 9 Edw. VII, c. 4, ss. 1, 6. 2 & 3 Geo. V, c. 6, s. 1 (*b*)].

71.—(1) (*a*) The legislative powers of the Governor of Bengal in Council, the Governor of Madras in Council, and the Governor of Bombay in Council are exercised at legislative meetings of their respective councils.

(2) For the exercise of those powers the governors of Bengal, Madras, and Bombay respectively must nominate and various bodies elect persons resident in India to be additional members of their councils.

(3) The maximum number of the additional members of each of the said councils (besides the advocate-general of the province or officer acting in that capacity) is fifty (*b*).

(4) In the case of the councils of the Governors of Madras and Bombay, and if so ordered by the Governor of Bengal in the case of his council, the advocate-general or acting advocate-general for the time being of the presidency must be appointed one of the additional members of the council of the governor of that presidency.

(5) Of the additional members of each of the said councils at least one-half must be persons who are not in the civil or military service of the Crown in India, and if any such

additional member accepts office under the Crown in India, his seat as an additional member thereupon becomes vacant.

(6) The term of office of an additional member of any of the said councils [other than the advocate-general or acting advocate-general] (*c*) is ordinarily three years (*d*).

(7) An additional member of any of the said councils is entitled to be present at legislative meetings of the council, and at no other.

(8) The Governor-General in Council must, with the approval of the Secretary of State in Council, make regulations (*e*) as to the conditions under which and manner in which nominations and elections are to be made in accordance with this section, and prescribe the manner in which such regulations are to be carried into effect.

(*a*) This section reproduces the provisions of the Act of 1861, as modified by the Act of 1909.

(*b*) The number under the Act of 1861 was not less than four nor more than eight.

(*c*) The words in square brackets probably express the effect of the Act of 1861, but the construction is not clear.

(*d*) See footnote (*c*) to section 60 above, p. 225.

(*e*) The effect of these regulations is summarized in Chapter I.

Procedure at legislative meetings of councils of Bengal, Madras, and Bombay. [24 & 25 Vict. c. 67, ss 34, 36. 9 Edw. VII, c. 47.]

72.—(1) At every legislative meeting of the council of the Governor of Bengal, the Governor of Madras, or the Governor of Bombay, the governor or some ordinary member of his council, and at least ten additional members of the council, must be present (*a*).

(2) The governor, if present, and in his absence the vice-president, or, in the absence of the vice-president, the senior ordinary member (*b*) of the Governor's Council, presides.

(3) In case of difference of opinion at any such legislative meeting, the opinion of the majority prevails.

(4) In case of an equality of votes, the governor, or in his absence the member presiding, has a second or casting vote.

(5) Any such legislative meeting must be held at such time and place as the governor appoints, and may be adjourned by

the governor or by the person presiding at the meeting if so authorized by the governor.

(*a*) By the Regulations of November 15, 1909, as amended in 1912, ten additional members are required to be present to form a quorum.

(*b*) The expression in the Act of 1861 is 'senior civil ordinary member,' and the word 'civil' was perhaps intended to exclude the local commander-in-chief, who, however, was an extraordinary member. If so, the word has become unnecessary since the passing of the Madras and Bombay Armies Act (56 & 57 Vict. c. 62). The Indian Councils Act, 1909, requires the appointment of a vice-president to take the place of the governor in his absence.

Constitution of legislative councils of lieutenant-governors and chief commissioners. [24 & 25 Vict. c. 67, ss. 45, 48. 9 Edw. VII, c. 4, ss. 1, 6.]

73.—(1) The additional members of the Council of the Lieutenant-Governor of Bihar and Orissa and the members of the councils for legislative purposes of other lieutenant-governors and of chief commissioners (*a*) must be such persons resident in India as the lieutenant-governor or chief commissioner, with the approval of the governor-general, nominates, and persons elected by various bodies.

(2) The maximum number of additional members or members is, in the case of Bihar and Orissa, and of the United Provinces of Agra and Oudh, fifty; in the case of the Punjab and Burma thirty, and in the case of Assam and the Central Provinces twenty-five.

(3) The maximum number of the members of any other council of a lieutenant-governor constituted for legislative purposes is thirty.

(4) The term of office of an additional member of the Council of the Lieutenant-Governor of Bihar and Orissa and of a member of any other lieutenant-governor's council is ordinarily three years (*b*).

(5) The Governor-General in Council may, with the approval of the Secretary of State in Council, make regulations as to the conditions under which and manner in which nominations and elections are to be made in accordance with this section, and prescribe the manner in which such regulations are to be carried into effect (*c*).

(*a*) By s. 44 of the Indian Councils Act, 1861, the Governor-General in Council was also empowered to extend the provisions of the Act to the territories known as the North-Western Provinces and the Punjab respectively. A legislative council was established for the North-Western Provinces and Oudh together (see the powers under the next section), by proclamation of November 26, 1886, and the name of the province for which the council was established was in 1901 altered to the United Provinces of Agra and Oudh. Legislative councils were established for the Punjab and Burma by proclamation of April 9, 1897, for the province of Bihar and Orissa by proclamation of March, 1912 (see Act VII of 1912), for Assam in 1912, and for the Central Provinces in 1913. Under the regulations for the constitution of these legislative councils a majority of the members of each council must be persons who are not in the civil or military service of the Crown in India.

(*b*) See footnote (*c*) to section 60, above, p. 225.

(*c*) This power was given by the Act of 1909. The regulations are to the same general effect as those for Madras and Bombay.

Power to constitute new local legislatures. [24 & 25 Vict. c. 67, ss 46–49.]

74.—(1) The Governor-General in Council may, with the previous approval of the Secretary of State in Council, and by notification in the Gazette of India, constitute a new province for legislative purposes, and, if necessary, appoint a lieutenant-governor for any such province, and constitute the Lieutenant-Governor in Council of the province, as from a date specified in the notification, a local legislature for that province, and define the limits of the province for which the Lieutenant-Governor in Council is to exercise legislative powers.

(2) Any law made by the local legislature of any province shall continue in force in any part of the province severed therefrom in pursuance of this section until superseded by a law of the governor-general or of the local legislature to whose province the part is annexed (*a*).

(*a*) This section is intended to give the effect of the existing enactments in the Act of 1861 (24 & 25 Vict. c. 67, ss. 46–49), which run as follows:

'46. It shall be lawful for the governor-general, by proclamation as aforesaid, to constitute from time to time new provinces for the purposes of this Act, to which the like provisions shall be applicable; and, further, to appoint from time to time a lieutenant-governor to

any province so constituted as aforesaid, and from time to time to declare and limit the extent of the authority of such lieutenant-governor, in like manner as is provided by the Government of India Act, 1854, respecting the lieutenant-governors of Bengal and the North-Western Provinces.

'47. It shall be lawful for the Governor-General in Council, by such proclamation as aforesaid, to fix the limits of any presidency, division, province, or territory in India for the purposes of this Act, and further by proclamation to divide or alter from time to time the limits of any such presidency, division, province, or territory, for the said purposes. Provided always, that any law or regulation made by the Governor or Lieutenant-Governor in Council of any presidency, division, province, or territory shall continue in force in any part thereof which may be severed therefrom by any such proclamation, until superseded by law or regulation of the Governor-General in Council, or of the Governor or Lieutenant-Governor in Council of the presidency, division, province, or territory to which such parts may become annexed.

'48. It shall be lawful for every such Lieutenant-Governor in Council thus constituted to make laws for the peace and good government of his respective division, province, or territory; and, except as otherwise hereinbefore specially provided, all the provisions in this Act contained respecting the nomination of additional members for the purpose of making laws and regulations for the presidencies of Fort Saint George and Bombay, and limiting the power of the Governors in Council of Fort Saint George and Bombay, for the purpose of making laws and regulations, and respecting the conduct of business in the meetings of such councils for that purpose, and respecting the power of the governor-general to declare or withhold his assent to laws or regulations made by the Governor in Council of Fort Saint George and Bombay, and respecting the power of Her Majesty to disallow the same, shall apply to laws or regulations to be so made by any such Lieutenant-Governor in Council.

'49. Provided always, that no proclamation to be made by the Governor-General in Council under the provisions of this Act, for the purpose of constituting any council for any presidency, division, provinces, or territories hereinbefore named, or any other provinces, or for altering the boundaries of any presidency, division, province, or territory, or constituting any new province for the purpose of this Act, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the governor-general.'

It was under these enactments that local legislatures were established for the North-Western Provinces and Oudh (1886), for Burma (1897), and for Bihar and Orissa (1912). *See* Act VII of 1912.

The effect of the enactments appears to be that a new lieutenant-governorship cannot be created unless a local legislature is created at the same time, as was done in the last two cases mentioned above.

The maximum number of members of any council of a lieutenant-governor hereafter constituted is thirty. *See* the Indian Councils Act, 1909, Sch. I.

Section 3 of the Government of India Act, 1912 (2 & 3 Geo. V, c. 6), empowers the Governor-General in Council to establish a legislative council for any chief commissionership, by proclamation, adapting the provisions of the Indian Councils Acts relating to lieutenant-governorships. A legislative council was established for Assam on November 14, 1912, and for the Central Provinces in November, 1913.

Procedure at meetings of lieutenant-governor's council. [24 & 25 Vict. c. 67, s. 45. 9 Edw. VII, c. 4, s. 4.]

75.—(1) At every meeting of a lieutenant-governor's council the lieutenant-governor, or in his absence the vice-president of his council, or, in the absence of the vice-president, the member of the council highest in official rank among those holding office under the Crown, presides (*a*).

(2) The legislative powers of the council may be exercised only at meetings at which the lieutenant-governor or some other member holding office under the Crown, and a specified number of additional members of the council, are present (*b*).

(3) In case of difference of opinion at any meeting of the lieutenant-governor's council, if there is an equality of votes, the lieutenant-governor or other person presiding has a second or casting vote.

(*a*) The Indian Councils Act, 1909, requires the appointment of a vice-president to take the place of the lieutenant-governor in his absence.

(*b*) Under the Regulations of 1909 as amended in 1912 there are required to be present, in order to form a quorum, ten additional members in the case of the Council of Bihar and Orissa and ten members in the case of the United Provinces, eight in the case of the Punjab and Assam, and six in the case of Burma.

Powers of local legislature. [24 & 25 Vict. c. 67, ss. 42, 43, 48. 55 & 56 Vict. c. 14, s. 5.]

76.—(1) The local legislature of any province in India may, subject to the provisions of this Digest, make laws for the peace and good government of the territories for the time being constituting that province (*a*).

(2) The local legislature of any province may, with the previous sanction of the governor-general, but not otherwise, repeal or amend as to that province any law or regulation made by any authority in India other than that local legislature (*b*).

(3) The local legislature of any province may not, without the previous sanction of the governor-general, make or take into consideration any law—

(*a*) affecting the public debt of India, or the customs duties or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the government of India; or

(*b*) regulating any of the current coin, or the issue of any bills, notes, or other paper currency; or

(*c*) regulating the conveyance of letters by the post office or messages by the electric telegraph within the province; or

(*d*) altering in any way the Indian Penal Code (*c*); or

(*e*) affecting the religion or religious rites or usages of any class of His Majesty's subjects in India; or

(*f*) affecting the discipline or maintenance of any part of His Majesty's naval or military forces; or

(*g*) regulating patents or copyright; or

(*h*) affecting the relations of the Government with foreign princes or States.

(4) The local legislature of any province has not power to make any law affecting any Act of Parliament for the time being in force in the province (*d*).

(5) Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the governor-general in pursuance of the provisions contained in this Digest, is not to be deemed invalid by reason only of its requiring the previous sanction of the governor-general under this section.

(*a*) The Governor-General in Council has concurrent power to legislate for a province under a local legislature. In practice, however, this power is not, unless under very exceptional circumstances, exercised as to matters within the competency of the local legislature.

(*b*) Under the Act of 1861 a local legislature could not alter an Act of the Government of India passed after the Act of 1861 came into operation. Consequently the sphere of operations of the local legis-

latures was often inconveniently restricted by the numerous Acts passed by the Governor-General in Council since 1861, particularly by such general Acts as the Evidence Act and the Easements Act. The provision reproduced in sub-section (2) was inserted in the Act of 1892 for the purpose of removing this inconvenience.

(c) Sir Charles Wood, when Secretary of State for India, in a dispatch dated December 1, 1862, addressed the Government of India as follows:

'Cases, no doubt, will occasionally occur when special legislation by the local Governments for offences not included in the Penal Code will be required. In these cases the general rule should be to place such offences under penalties already assigned in the Code to acts of a similar character. This mode of legislation, though an addition to, cannot be deemed an alteration of the Penal Code; but if any deviation is considered necessary, then the law requires that your previous sanction should be obtained.

'It was the intention of Her Majesty's Government that, except in local and peculiar circumstances, the Code should contain the whole body of penal legislation, and that all additions or modifications suggested by experience should from time to time be incorporated in it. And the duty of maintaining this uniformity, of course, devolves upon your Excellency in Council.

'As a general rule, for the guidance of the local councils, it would probably be expedient—and this appears also to be your own view—that all bills containing penal clauses should be submitted for your previous sanction.'

In consequence of this dispatch all Bills introduced into a local legislature and containing penal clauses are required to be sent to the Government of India for consideration as to the penal clauses.

As to what would amount to an alteration of the Penal Code, see Minutes by Sir H. S. Maine, Nos. 5 and 6.

(d) Among the Acts which a local legislature cannot 'affect' is the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), and, consequently, questions have arisen as to the validity of laws affecting the jurisdiction of the chartered high court. It has been held that the Governor of Bombay in Council has power to pass Acts limiting or regulating the jurisdiction of the courts established by the local legislature, and that such Acts are not void merely because their indirect effect may be to increase or diminish the occasions for the exercise of the appellate jurisdiction of the high court (*Premshankar Raghunathji* v. *Government of Bombay*, 8 Bom. H. C. Rep. A. C. I. 195). Also that the Bombay Legislative Council has authority to make laws regulating the rights and obligations of the subjects of the Bombay Government, but not to affect the authority of the high court in dealing with those rights and obligations (*Collector of Thana* v. *Bhaskar Mahadev Rheth*, I. L. R., 8 Bom. 264).

The power of the Governor-General in Council to affect by legislation the prerogative of the Crown is expressly recognized by statute (see below, s. 79). It may perhaps be inferred that the local legislatures

do not possess this power. But see *Bell* v. *Municipality of Madras*, 25 Mad. 474.

Business at legislative meetings. [24 & 25 Vict. c. 67, ss. 37, 38, 48. 9 Edw. VII, c. 4, s. 5.]

77.—(1) At a legislative meeting of the Governor of Bengal in Council, of the Governor of Madras in Council, of the Governor of Bombay in Council, or of the Lieutenant-Governor of Bihar and Orissa in Council, and at a meeting of any other Lieutenant-Governor or any Chief Commissioner in Council, no business may be transacted other than the consideration of measures introduced [or proposed to be introduced] (*a*) into the council for the purpose of enactment, or the alteration of rules for the conduct of business at legislative meetings (*b*).

(2) At any such meeting no motion may be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced [or proposed to be introduced into the council for that purpose, or having reference to some rule for the conduct of business] (*a*).

(3) Provided that the Governors in Council of Bengal, Madras, and Bombay respectively, and the Lieutenant-Governor or Lieutenant-Governor in Council or Chief Commissioner of every province must, with the sanction of the Governor-General in Council, make rules for authorizing at any legislative meeting of their respective councils the discussion of the annual financial statement of their respective local Governments and of any matter of general public interest and the asking of questions, but under such conditions and restrictions as may in the rules applicable to those councils respectively be prescribed.

(4) It is not lawful for any member of any such council to introduce, without the previous sanction of the governor or lieutenant-governor or chief commissioner, any measure affecting the public revenues of the province or imposing any charge on those revenues.

(5) Rules for the conduct of business at legislative meetings of the Governor of Bengal in Council, of the Governor of

Madras in Council, of the Governor of Bombay in Council, or of any Lieutenant-Governor or Chief Commissioner in Council, may be made and amended at legislative meetings of the council, subject to the assent of that governor or lieutenant-governor or chief commissioner, but any such rule may be disallowed by the Governor-General in Council, and if so disallowed shall have no effect: Provided that rules made under this section with respect to the discussion of the annual financial statement or of any matter of general public interest or the asking of questions are not to be subject to amendment as aforesaid.

(*a*) The words in square brackets are not in the Act of 1861, but represent the existing practice.

(*b*) The range of business at meetings of these legislative councils has been materially extended by s. 5 of the Indian Councils Act, 1909, and the rules made under it.

Assent to Acts of local legislatures. [24 & 25 Vict. c. 67, ss. 39, 40, 41, 48.]

78.—(1) When an Act has been passed at a meeting of the council of a governor, lieutenant-governor or chief commissioner, the governor or lieutenant-governor or chief commissioner, whether he was or was not present in council at the passing of the Act, may declare that he assents to or withholds his assent from the Act.

(2) If he withholds his assent from any such Act, the Act has no effect.

(3) If he assents to any such Act he must forthwith send an authentic copy of the Act to the governor-general, and the Act has not validity until the governor-general has assented thereto, and that assent has been signified by the governor-general to, and published by, the governor, lieutenant-governor, or chief commissioner.

(4) Where the governor-general withholds his assent from any such Act he must signify to the governor, lieutenant-governor, or chief commissioner in writing his reason for so withholding his assent (*a*).

(5) When any such Act has been assented to by the governor-general, he must send to the Secretary of State

an authentic copy thereof, and it is lawful for His Majesty to signify through the Secretary of State in Council his disallowance of any such Act.

(6) Where the disallowance of any such Act has been so signified, the governor or lieutenant-governor or chief commissioner must forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, becomes void accordingly.

(*a*) Assent has been withheld on one or more of the following grounds:

(1) that the principle or policy of the Act, or of some particular provision of the Act, is unsound;

(2) that the Act, or some provision of the Act, is *ultra vires* of the local legislature;

(3) that the Act is defective in form.

With respect to (3), the recent practice of the Government of India has been to avoid criticism of the drafting of local Bills or Acts.

Validity of Indian Laws.

Removal of doubts as to validity of certain laws. [24 & 25 Vict. c. 67, ss. 14, 24, 33, 48. 34 & 35 Vict. c. 34, s. 1.]

79. A law made by any authority in India is not invalid solely on account of any one or more of the following reasons:

(1) in the case of a law made by the Governor-General in Council, because it affects the prerogative of the Crown (*a*);

(2) in the case of any law, because the requisite proportion of members not holding office under the Crown in India was not complete at the date of its introduction to the Council or its enactment;

(3) in the case of a law made by a local legislature, because it confers on magistrates, being justices of the peace, the same jurisdiction over European British subjects as that legislature by Acts duly made could lawfully confer on magistrates in the exercise of authority over natives in the like cases (*b*).

(*a*) This saving does not appear to apply to the local legislatures. See note (*d*) on s. 76. As to the prerogatives of the Crown, see note (*a*) on s. 36.

(*b*) An Indian Act (XXII of 1870) was passed to confirm certain previous Acts of the Madras and Bombay legislatures which had been adjudged invalid on the ground of interference with the rights of European British subjects. See *R.* v. *Reay*, 7 Bom. Cr 6, and the

speeches of Mr. FitzJames Stephen in the Legislative Council in 1870, Proceedings, pp. 362, 384. As Indian legislation could not confer on local legislatures the requisite power in the future, it was conferred by an Act of Parliament in 1871 (34 & 35 Vict. c. 34).

PART VII.

SALARIES, LEAVE OF ABSENCE, VACATION OF OFFICE, TEMPORARY APPOINTMENTS, &c.

Salaries and allowances of governor-general and certain other officials in India. [33 Geo. III, c. 52, s. 32. 3 & 4 Will. IV, c. 85, ss. 76, 77. 16 & 17 Vict. c. 95, s. 35. 24 & 25 Vict. c. 67, s. 4. 43 Vict. c. 3, ss. 2, 4.]

80.—(1) There are to be paid to the Governor-General of India and to the other persons mentioned in the First Schedule to this Digest, out of the revenues of India, such salaries, not exceeding in any case the maximum specified in that behalf in the said schedule, and such allowances (if any) for equipment and voyage, as the Secretary of State in Council may by order fix in that behalf, and subject to or in default of any such order, as are now payable.

(2) Provided as follows:

(*a*) An order affecting salaries of members of the Governor-General's council may not be made without the concurrence of a majority of votes at a meeting of the Council of India;

(*b*) If any person to whom this section applies holds or enjoys any pension or salary, or any office of profit under the Crown or under any public office, his salary under this section must be reduced by the amount of the pension, salary, or profits of office so held or enjoyed by him;

(*c*) Nothing in the provisions of this section with respect to allowances authorizes the imposition of any additional charge on the revenues of India.

(3) The salary payable to a person under this section commences on his taking upon himself the execution of the office to which the salary is attached, and is to be the whole profit or advantage which he enjoys during his continuance in the office (*a*).

(*a*) The salaries of the governor-general, governors, and members of council were fixed at what is shown as the maximum in the First Schedule by 3 & 4 Will. IV, c. 85, s. 76; but were there declared to be

subject to such reduction as the Court of Directors, with the sanction of the Board of Control, might at any time think fit.

The salary of the commander-in-chief and of lieutenant-governors was fixed at 100,000 Company's rupees by 16 & 17 Vict. c. 95, s. 35, but the salaries so fixed were declared to be subject to the provisions and regulations of the Government of India Act, 1833 (3 Will. IV, c. 85), concerning the salaries thereby appointed.

The view adopted in this Digest is that these salaries can be fixed at any amount not exceeding the amounts specified in the Acts of 1833 and 1853. The power to reduce has been exercised more than once, but it is open to argument whether the power to reduce involves a power to raise subsequently.

The allowances for equipment and voyage of the officers mentioned in the First Schedule (and also of the bishops and archdeacons of Calcutta, Madras, and Bombay) may, under the Indian Salaries and Allowances Act, 1880 (43 Vict. c. 3), be fixed, altered or abolished by the Secretary of State in Council. But nothing in that Act was to authorize the imposition of any additional charge on the revenues of India.

Sub-section (3) is taken from s. 76 of the Act of 1833.

Under 33 Geo. III, c. 52, s. 32, a commander-in-chief was not to be entitled to any salary or emolument as member of council, unless it was specially granted by the Court of Directors.

The salaries and allowances now paid under the enactments reproduced in this Digest are as follows:

Officer.	*Salary.*	*Equipment and Voyage.*[1]
	Rs.	£
Viceroy and Governor-General	2,50,800	5,000
Governors of Bengal, Bombay, and Madras	1,20,000	1,000
Commander-in-Chief	1,00,000	500
Lieutenant-Governor	1,00,000	—
Member of Governor-General's Council	80,000	300
Member of Council, Bengal, Madras, and Bombay	64,000	—
Chief Justice, Calcutta	72,000	
Puisne Judges, Calcutta	48,000	
Chief Justice, Madras	60,000	
Puisne Judges, Madras	48,000	300
Chief Justice, Bombay	60,000	
Puisne Judges, Bombay	48,000	
Bishop of Calcutta	45,980	
Bishops of Madras and Bombay	25,600	300
Archdeacon, Calcutta	Pay as Senior Chaplains + Rs. 3,200	
" Madras		
" Bombay		

[1] These allowances are not payable unless the officer is resident in Europe at the time of the appointment. Smaller allowances are payable if the officer is then resident elsewhere.

Leave of absence to members of council. [24 & 25 Vict. c. 67, s. 26.]

81.—(1) The Governor-General in Council and the Governors of Bengal, Madras, and Bombay in Council respectively may grant to any of the ordinary members of their respective councils leave of absence under medical certificate for a period not exceeding six months.

(2) Where a member of council obtains leave of absence in pursuance of this section, he retains his office during his absence, and on his return and resumption of his duties is entitled to receive half his salary for the period of his absence; but if his absence exceeds six months his office becomes vacant.

Provision as to absence from India or province. [33 Geo. III, c. 52, s. 37. 7 Geo. IV, c. 56, s. 3. 3 & 4 Will. IV, c. 85, s. 79. 7 Will. IV, and 1 Vict. c. 47.]

82.—(1) If the Governor-General, the Governor of Bengal, Madras or Bombay, or the commander-in-chief of His Majesty's forces in India, and, subject to the foregoing provisions of this Digest as to leave of absence, if any ordinary member of the council of the Governor-General, or of the Governor of Bengal, Madras or Bombay departs from India intending to return to Europe, his office thereupon becomes vacant (*a*).

[(2) No act or declaration of any governor-general, governor, or member of council, other than as aforesaid, except a declaration in writing under hand and seal, delivered to a secretary to the Government of India or to the chief secretary of the presidency wherein he is, in order to its being recorded, shall be deemed or held as a resignation or surrender of his office (*b*).]

[(3) If the governor-general, or any ordinary member of the governor-general's council, leaves India otherwise than in the known actual service of the Crown, and if any governor, lieutenant-governor, or ordinary member of a governor's council leaves the presidency to which he belongs otherwise than as aforesaid, his salary and allowances are not payable during his absence to any person for his use (*c*).]

[(4) If any such officer, not having proceeded or intended to proceed to Europe, dies during his absence and whilst intending to return to India or to his presidency, his salary and

allowances, will, subject to any rules in that behalf made by the Secretary of State in Council, be paid to his personal representatives.

(5) If any such officer does not return to India or his presidency, or returns to Europe, his salary and allowances will be deemed to have ceased on the day of his leaving India or his presidency (*d*).]

(*a*) Under the Act of 1793 33 Geo. III, c. 52, s. 37, 'the departure from India of any governor-general, governor, member of council, or commander-in-chief, with intent to return to Europe, shall be deemed in law a resignation and avoidance of his office,' and his arrival in any part of Europe is to be a sufficient indication of such intent. The Act of 1833 (3 & 4 Will. IV, c. 85, s. 79) enacts in almost identical words that the return to Europe, or departure from India with intent to return to Europe, of any governor-general of India, governor, member of council, or commander-in-chief, is to be deemed in law a resignation and avoidance of his office or employment. These provisions have been qualified as to members of council by the power to grant sick leave under the Act of 1861 (see s. 82). But when the Duke of Connaught wished to visit England in the Jubilee year during his term of office as commander-in-chief in the Bombay Presidency a special Act had to be passed (50 Vict. sess. 2, c. 10).

(*b*) This sub-section reproduces a provision in s. 79 of the Act of 1833, which was copied from a similar provision in the Act of 1793. The provision possibly arose out of the circumstances attending Warren Hastings's resignation in 1776 (see above, p. 64), but does not appear to be observed in practice.

(*c*) This sub-section is intended to reproduce as far as practicable the effect of the enactments still in force on this subject, but their language is not clear, and was framed with reference to circumstances which no longer exist.

Section 37 of the Act of 1793 enacts that 'if any such governor-general or any other officer whatever in the service of the said Company shall quit or leave the presidency or settlement to which he shall belong, other than in the known actual service of the said Company, the salary and allowances appertaining to his office shall not be paid or payable during his absence to any agent or other person for his use, and in the event of his not returning back to his station at such presidency or settlement, or of his coming to Europe, his salary and allowances shall be deemed to have ceased from the day of his quitting such presidency or settlement, any law or usage to the contrary notwithstanding.'

An Act of 1826 (7 Geo. IV, c. 56, s. 3), after referring to this provision, enacts that the 'Company may cause payment to be made to the representatives of officers in their service, civil or military, who, having

quitted or left their stations and not having proceeded or intended to proceed to Europe, intending to return to their stations, have died or may hereafter happen to die during their temporary absence within the limits of the said Company's charter or at the Cape of Good Hope, of such salaries and allowances, or of such portions of salaries and allowances, as the officers so dying would have been entitled to if they had returned to their station.'

Section 79 of the Act of 1833 enacts that 'if any such governor-general or member of council of India shall leave the said territories, or if any governor or other officer whatever in the service of the said Company shall leave the presidency to which he shall belong, other than in the known actual service of the said Company, the salary and allowances appertaining to his office shall not be paid or payable during his absence to any agent or other person for his use, and in the event of his not returning or of his coming to Europe, his salary and allowances shall be deemed to have ceased from the day of his leaving the said territories or the presidency to which he may have belonged. Provided that it shall be lawful for the said Company to make such payment as is now by law permitted to be made to the representatives of their officers or servants who, having left their stations intending to return thereto, shall die during their absence.'

An Act of 1837 (7 Will. IV, c. 47) enacts that these provisions in the Acts of 1793 and 1833 are 'not to extend to the case of any officer or servant of the Company under the rank of governor or member of council who shall quit the presidency to which he shall belong in consequence of sickness under such rules as may from time to time be established by the Governor-General of India in Council, or by the Governor in Council of such presidency, as the case may be, and who shall proceed to any place within the limits of the East India Company's charter, or to the Mauritius, or to the island of St. Helena, nor to the case of any officer or servant of the said Company under such rank as aforesaid who, with the permission of the Government of the presidency to which he shall belong, shall quit such presidency in order to proceed to another presidency for the purpose of embarking thence for Europe, until the departure of such officer or servant from such last-mentioned presidency with a view to return to Europe, so as that the port of such departure for Europe shall not be more distant from the place which he shall have quitted in his own presidency than any port of embarkation within such presidency.'

These rules were to require the approval of the Court of Directors and the Board of Control.

Finally, s. 32 of the Act of 1853 (see s. 89 of the Digest) declared that 'Nothing in any enactment now in force, or any charter relating to the said Company, shall be taken to prevent the establishment, by the Court of Directors (under the direction and control of the said Board of Commissioners), from time to time, of any regulations which they may deem expedient in relation to the absence on sick leave or furlough of all or any officers and persons in the service of the said Company in

India, or receiving salaries from the said Company there, under which they respectively may be authorized to repair to and reside in Europe or elsewhere out of the limits of the said Company's charter, without forfeiture of pay or salary, during the times and under the circumstances during and under which they may now be permitted (while absent from their duty) to reside in places out of India within the limits of the said Company's charter, or during such times and under such circumstances as by such regulations may be permitted.'

The powers conferred by the Act of 1853 would seem to override the previous provisions as to salary, but not the previous provisions as to vacation of office.

(*d*) The last two sub-sections are inserted as a rough reproduction of the Act of 1826, and of an enactment in the Act of 1853, but it is doubtful whether these enactments are still law, and whether they are not superseded by regulations under the Act of 1853.

Conditional appointments. [3 & 4 Will. IV, c. 85, s. 61. 24 & 25 Vict. c. 67 ss. 2, 5.]

83.—(1) His Majesty may by warrant under his Sign Manual appoint any person conditionally to succeed to any of the offices of governor-general, governor, or ordinary member of the council of the governor-general or of the governor of Bengal, Madras, or Bombay, in the event of the office becoming vacant, or in any other event or contingency expressed in the appointment, and revoke any such conditional appointment (*a*).

(2) A person so conditionally appointed is not entitled to any authority, salary, or emolument appertaining to the office to which he is appointed, until he is in the actual possession of the office.

(*a*) By 3 & 4 Will. IV, c. 85, the power of making conditional appointments to the offices of governor-general, governor, and member of the Council of Madras and Bombay was vested in the Court of Directors, and consequently is now vested in the Secretary of State (21 & 22 Vict. c. 106, s. 3).

Under 24 & 25 Vict. c. 67, s. 5, the power of making conditional appointments to the office of ordinary member of the governor-general's council is apparently exercisable either by the King, or by the Secretary of State with the concurrence of a majority of the Council of India.

In practice, the power is in all these cases exercised by the King only.

Power for governor-general to

84.—(1) If any person entitled under a conditional appointment to succeed to the office of governor-general

exercise powers before taking seat. [21 & 22 Vict. c. 106, s. 63.]

on the occurrence of a vacancy therein, or appointed absolutely to that office, is in India on or after the occurrence of the vacancy, or on or after the receipt of the absolute appointment, as the case may be, and thinks it necessary to exercise the powers of governor general before he takes his seat in council, he may make known by proclamation his appointment, and his intention to assume the office of governor-general.

(2) After the proclamation, and thenceforth until he repairs to the place where the council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General in Council, except the power of making laws at legislative meetings.

(3) All acts done in the council after the date of the proclamation, but before the communication thereof to the council, are valid, subject, nevertheless, to revocation or alteration by the person who has so assumed the office of governor-general.

(4) When the office of governor-general is assumed under the foregoing provision, if there is at any time before the governor-general takes his seat in council no president of the council authorized to preside at legislative meetings, the vice-president or, if he is absent, the senior ordinary member of council then present presides therein, with the same powers as the governor general would have had if present.

Provision for temporary vacancy in office of governor-general. [3 & 4 Will. IV, c. 85, s. 62. 24 & 25 Vict. c. 67, ss. 50, 51. 9 Edw. VII, c. 4, s. 4.]

85.—(1) If a vacancy occurs in the office of governor-general when there is no conditional or other successor in India to supply the vacancy, the Governor of Bengal, the Governor of Madras, or the Governor of Bombay, whichever has been first appointed to the office of governor by His Majesty, is to hold and execute the office of governor-general until a successor arrives or until some person in India is duly appointed thereto.

(2) Every such acting governor-general, while acting as such, has and may exercise all the rights and powers of the

office of governor-general, and is entitled to receive the emoluments and advantages appertaining to the office, forgoing the salary and allowances appertaining to his office of governor; and his office of governor is supplied for the time during which he acts as governor-general in the manner directed by law with respect to vacancies in the office of governor. 2 & 3 Geo. V, c. 6, s 4.]

(3) If, on the vacancy occurring, it appears to the governor who by virtue of this provision holds and executes the office of governor-general necessary to exercise the powers thereof before he takes his seat in council, he may make known by proclamation his appointment, and his intention to assume the office of governor-general, and thereupon the provisions of this Digest respecting the assumption of the office by a person conditionally appointed to succeed thereto apply.

(4) Until such a governor has assumed the office of governor-general, if no conditional or other successor is on the spot to supply the vacancy, the vice-president or in his absence, the senior ordinary member of council, holds the office of governor-general until the vacancy is filled in accordance with the provisions of this Digest (*a*).

(5) Every member of council so acting as governor-general, while so acting, has and may exercise all the rights and powers of the office of governor-general, and is entitled to receive the emoluments and advantages appertaining to the office, forgoing his salary and allowances as member of council for that period.

(*a*) Thus, on Lord Mayo's death in 1872, Sir John Strachey acted as governor-general from February 9 until the arrival of Lord Napier of Merchistoun on February 23.

Provision for temporary vacancy in office of Governor of Bengal, Madras, or Bombay.

86.—(1) If a vacancy occurs in the office of Governor of Bengal, Madras, or Bombay when no conditional or other successor is on the spot to supply the vacancy, the vice-president, or, in his absence, the senior ordinary member of the governor's council, or, if there is no council, the chief secretary to the local Government (*a*), holds and executes the

[3 & 4 Will. IV, c. 85, s. 63. 9 Edw. VII, c. 4, s. 4.]

office of governor until a successor arrives, or until some other person on the spot is duly appointed thereto.

(2) Every such acting governor is, while acting as such, entitled to receive the emoluments and advantages appertaining to the office of governor, forgoing the salary and allowances appertaining to his office of member of council or secretary.

(*a*) The Act of 1833 contained a power to abolish these councils.

Provision for temporary vacancy in office of ordinary member of council. [24 & 25 Vict. c. 67, s. 27.]

87.—(1) If a vacancy occurs in the office of an ordinary member of the council of the governor-general, or of the council of the Governor of Bengal, Madras, or Bombay, when no person conditionally appointed to succeed thereto is present on the spot, the vacancy is to be supplied by the appointment of the Governor-General in Council or Governor in Council, as the case may be.

(2) Until a successor arrives the person so appointed executes the office to which he has been appointed, and has and exercises all the rights and powers thereof, and is entitled to receive the emoluments and advantages appertaining to the office during his continuance therein, forgoing all salaries and allowances by him held and enjoyed at the time of his being appointed to that office.

(3) If any ordinary member of any of the said councils is, by infirmity or otherwise, rendered incapable of acting or of attending to act as such, or is absent on leave, and if any person has been conditionally appointed as aforesaid, the place of the member so incapable or absent is to be supplied by that person.

(4) If no person conditionally appointed to succeed to the office is on the spot, the Governor-General in Council or Governor in Council, as the case may be, is to appoint some person to be a temporary member of council, and, until the return to duty (*a*) of the member so incapable or absent, the person conditionally or temporarily appointed executes the office to which he has been appointed, and has and exercises all the rights and powers thereof, and receives half

the salary of the member of council whose place he supplies, and also half the salary of any other office he may hold, if he hold any such office, the remaining half of such last-named salary being at the disposal of the Governor-General in Council or Governor in Council, whichever may appoint to the office.

(5) Provided as follows :—

(*a*) No person may be appointed a temporary member of council who might not have been appointed as hereinbefore provided to fill the vacancy supplied by the temporary appointment ; and

(*b*) If the Secretary of State informs the governor-general that it is not the intention of His Majesty to fill a vacancy in the council of the governor-general, no temporary appointment may be made under this section to fill the vacancy, and if any such temporary appointment has been made before the date of the receipt of the information by the governor-general, the tenure of the person temporarily appointed ceases from that date. [37 & 38 Vict. c. 91, s. 2.]

(*a*) The words 'to duty' are not in the Act, but seem to express the intention.

Vacancies amongst legislative members of council.

88.—(1) An additional member of the council of the governor-general or of a governor, or a member for legislative purposes of the council of a lieutenant-governor or chief commissioner, may resign his office to the governor-general, governor, lieutenant-governor, or chief commissioner, and on the acceptance of the resignation the office becomes vacant. [24 & 25 Vict. c. 67, ss. 12, 31. 55 & 56 Vict. c 14, s. 4 (1).]

(2) If any such member is absent from India or unable to attend to the duties of his office for a period of two consecutive months, the governor-general, governor, lieutenant-governor or chief commissioner, as the case may be, may declare by a notification published in the Government Gazette, that the seat in council of that member has become vacant.

The filling of vacancies is now regulated by the Regulations of November 15, 1909 (as amended in 1912), made under the Indian Councils Act, 1909.

Leave on furlough. [16 & 17 Vict. c. 95, s. 32.]

89. The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make regulations as to the absence on sick leave or furlough of persons in the service of the Crown in India, and the terms as to continuance or diminution of pay, salary, and allowances on which any such sick leave or furlough may be granted.

Power to make regulations as to Indian appointments. [3 & 4 Will. IV, c. 85, s. 78. 21 & 22 Vict. c. 106, ss. 30, 37.]

90. The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make regulations for distributing between the several authorities in India the power of making appointments to and promotions in offices, commands, and employments under the Crown in India.

PART VIII.

THE INDIAN CIVIL SERVICE.

No disabilities in respect of religion, colour, or place of birth. [3 & 4 Will. IV, c. 85, s. 17.]

91. No native of British India, nor any natural-born subject of His Majesty resident therein, is, by reason only of his religion, place of birth, descent, or colour, or any of them, disabled from holding any place, office, or employment under His Majesty in India.

This reproduces s. 87 of the Act of 1833, with the substitution of 'British India' for 'the said territories,' and 'His Majesty in India' for 'the said Company.' See the comments on this enactment in pars. 103–109 of the dispatch of December 10, 1834.

Regulations for admission to civil service. [21 & 22 Vict. c. 106, s. 32.]

92.—(1) The Secretary of State in Council may, with the advice and assistance of the Civil Service Commissioners, make regulations for the examination of natural-born subjects of His Majesty desirous of becoming candidates for appointment to the Indian Civil Service.

(2) The regulations prescribe the age and qualifications of the candidates, and the subjects of examination.

(3) Every regulation made in pursuance of this section must be forthwith laid before Parliament.

(4) The candidates certified to be entitled under the regulations must be recommended for appointment according to the order of their proficiency as shown by their examination.

(5) Such persons only as are so certified may be appointed or admitted to the Indian Civil Service by the Secretary of State in Council (*a*).

(*a*) The civil service referred to in these sections is the service which used to be known as the covenanted civil service, but which, under the rules framed in pursuance of Sir Charles Aitchison's Commission, is usually designated the Indian Civil Service.

Where a child of a father or mother who has been naturalized under the Naturalization Act, 1870 (33 & 34 Vict. c. 14), has during infancy become resident with the father or mother in any part of the United Kingdom or with the father while in the service of the Crown out of the United Kingdom, he is, by virtue of s. 10 (5) of that Act, a naturalized British subject, and is entitled to be treated under the enactment reproduced by this clause as if he were a natural-born British subject. The expression includes a native of British India, but would, apparently, not include a subject of a Native State in India.

Offices reserved to civil servants. [24 & 25 Vict. c. 54, s. 2.]

93. Subject to the provisions of this Digest, all vacancies happening in any of the offices specified or referred to in the Second Schedule to this Digest, and all such offices which may be created hereafter, must be filled from amongst the members of the Indian Civil Service.

The provision of the Act of 1793 as to filling vacancies from among members belonging to the same presidency was repealed by 2 & 3 Geo. V, c. 6, s. 4.

Power to appoint natives of India to reserved offices. [33 & 34 Vict. c. 3, s. 6.]

94.—(1) The authorities in India by whom appointments are made to offices in the Indian Civil Service may appoint any native of India of proved merit and ability to any such office, although he has not been admitted to that service in accordance with the foregoing provisions of this Digest.

(2) Every such appointment must be made subject to such rules as may be prescribed by the Governor-General in Council, and sanctioned by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(3) For the purposes of this section the expression 'native of India' includes any person born and domiciled in British

India, of parents habitually resident in British India, and not established there for temporary purposes only; and the Governor-General in Council may by resolution define and limit the qualification of natives of India thus expressed; but every resolution made by him for that purpose will be subject to the sanction of the Secretary of State in Council, and will not have force until it has been laid for thirty days before both Houses of Parliament.

The enactment reproduced by this section is not very clearly expressed, and runs as follows:—

'Whereas it is expedient that additional facilities should be given for the employment of natives in India, of proved merit and ability, in the civil service of Her Majesty in India: Be it enacted, that nothing in the Government of India Act, 1858, or in the Indian Civil Service Act, 1861, or in any other Act of Parliament or other law now in force in India, shall restrain the authorities in India by whom appointments are or may be made to offices, places, and employments in the civil service of Her Majesty in India from appointing any native of India to any such office, place, or employment, although such native shall not have been admitted to the said Civil Service of India in manner in s. 32 of the first-mentioned Act provided, but subject to such rules as may be from time to time prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council, with the concurrence of a majority of members present; and that for the purpose of this Act the words "natives of India" shall include any person born or domiciled within the dominions of Her Majesty in India, of parents habitually resident in India, and not established there for temporary purposes only; and that it shall be lawful for the Governor-General in Council to define and limit from time to time the qualification of natives of India thus expressed; provided that every resolution made by him for such purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.'

For the history of the successive rules made under this section, see above, p. 150. The expression 'native of India' as defined by the section has been construed as including persons born or domiciled in a Native State.

Power to make provisional appointments in certain cases. [24 & 25 Vict. c. 54, ss. 3, 4.

95.—(1) Where it appears to the authority in India by whom an appointment is to be made to any office reserved to members of the Indian Civil Service, that a person not being a member of that service ought, under the special circumstances of the case, to be appointed thereto, the authority may appoint thereto any person who has resided for at least seven years in India, and who has, before his appointment, fulfilled

all the tests (if any) which would be imposed in the like case on a member of that service. 1 & 2 Geo. V, c. 18, s. 1.

(2) Every such appointment is provisional only, and must forthwith be reported to the Secretary of State in Council, with the special reasons for making it; and unless the Secretary of State in Council approves the appointment, with the concurrence of a majority of votes at a meeting of the Council of India, and within twelve months from the date of the appointment notifies such approval to the authority by whom the appointment was made, the appointment must be cancelled.

PART IX.

The Indian High Courts.

Constitution.

Constitution of high courts. [24 & 25 Vict. c. 104, ss. 2, 19. 1 & 2 Geo. V, c. 18, s. 1.]

96.—(1) (*a*) Each high court consists of a chief justice, and as many other judges, not exceeding nineteen (*b*), as His Majesty may think fit to appoint.

(2) A judge of a high court must be—

(*a*) A barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing; or

(*b*) A member of the Civil Service of India of not less than ten years' standing, and having for at least three years served as or exercised the powers of a district judge; or

(*c*) A person having held judicial office not inferior to that of a subordinate judge, or a judge of a small cause court, for a period of not less than five years; or

(*d*) A person having been a pleader (*c*) of a high court for a period of not less than ten years.

(3) Provided that not less than one-third of the judges of a high court, including the chief justice, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Civil Service of India.

(*a*) There are four chartered high courts: at Calcutta, Madras, Bombay, and Allahabad. By s. 2 of the Indian High Courts Act, 1911 (1 & 2 Geo. V, c. 18) power is now given to establish additional chartered high courts.

(*b*) There is power in all cases to raise the number to this maximum. The Indian High Courts Act, 1911 (1 & 2 Geo. V, c. 18) has raised the maximum, including the chief justice, to 20 (s. 1), and given power to appoint additional temporary judges (s. 3).

(c) The word 'pleader' in the enactment reproduced by this section apparently includes every one who has for ten years been allowed to 'plead' in the Indian sense, i.e. to act as a barrister in the high court, though not a barrister or member of the Faculty of Advocates.

Tenure of office of judges of high courts. [24 & 25 Vict. c. 104, s. 4.]

97.—(1) Every judge of a high court holds his office during His Majesty's pleasure (*a*).

(2) Any such judge may resign his office, in the case of the high court at Calcutta, to the Governor-General in Council, and in the case of any other high court to the local Government of the province in which the high court is established.

(*a*) As to tenure during pleasure, see the note on s. 21 above.

Precedence of judges of high courts. [24 & 25 Vict. c. 104, s. 5.]

98.—(1) The chief justice of a high court has rank and precedence before the other judges of the same court.

(2) All the other judges of a high court have rank and precedence according to the seniority of their appointments, unless otherwise provided by the terms of their appointment.

Salaries, &c., of judges of high courts. [24 & 25 Vict. c. 104, s. 6.]

99. The Secretary of State in Council may fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage of the chief justices and judges of the several high courts, and from time to time alter them, but any such alteration does not affect the salary of any judge appointed before the date thereof.

For existing salaries and allowances, see note on s. 80.

Provision for vacancy in the office of chief justice or other judge. [24 & 25

100.—(1) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence of such a chief justice, the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases, is to appoint one of the judges of the same high court to perform the duties of chief justice of

the court until some person has been appointed by His Majesty to the office of chief justice of the court, and has entered on the discharge of the duties of that office, or until the chief justice has returned from his absence, as the case requires (*a*). [Vict. c. 104, s. 7.]

(2) On the occurrence of a vacancy in the office of any other judge of a high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the Governor-General in Council or local Government, as the case may be, may appoint a person, with such qualifications as are required in persons to be appointed to the high court, to act as a judge of the court; and the person so appointed may sit and perform the duties of a judge of the court until some person has been appointed by His Majesty to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the Governor-General in Council or local Government sees cause to cancel the appointment of the acting judge (*b*).

(*a*) Apparently the person appointed to act for the chief justice need *not* be a barrister-judge, though the chief justice himself must be a barrister. See s. 96 (3) above.

(*b*) The appointment remains in force until the occurrence of one of the contingencies mentioned in this sub-section, and hence cannot be made for a specified time. Probably the 'acting judge' referred to at the end of the sub-section is the judge acting as chief justice referred to above. There is no limit of time within which the appointment must be made. See *Rao Balwant Singh* v. *Rani Kishori* L. R. 25 I. A. 54, 76.

Jurisdiction.

101.—(1) Subject to any law made by the Governor-General in Council (*a*), the several high courts have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in [13 Geo. III, c. 63, ss. 13, 14. 21 Geo. III, c. 70, s. 8. 33 Geo. III, c. 52, s. 156.] Jurisdiction of high courts.

37 Geo. III, c. 142, s. 11. 39 & 40 Geo. III, c. 79, ss. 2, 5. 4 Geo. IV, c. 71, ss. 7, 17. 24 & 25 Vict. c. 104, s. 9.] them by charter or letters patent, and subject to the provisions of any such law, charter or letters patent, all such jurisdiction, powers, and authority as were vested in any of the courts in the same presidency abolished by the India High Courts Act, 1861, at the date of their abolition (*b*).

(2) Each of the high courts at Calcutta, Madras, and Bombay is a court of record and a court of oyer and terminer and jail delivery for the territories under its jurisdiction.

(3) Subject to any law made by the Governor-General in Council, the said high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force (*c*).

(*a*) This power is reserved by s. 9 of the Indian High Courts Act, 1861.

(*b*) The jurisdiction of the chartered high courts in India is based partly on their charters and partly on parliamentary enactments applying either to the high courts themselves or to their predecessors.

The charters are to be found in the *Statutory Rules and Orders Revised*, vol. vi.

The statutory enactments still unrepealed with respect to the jurisdiction of the high court are as follows :—

By s. 13 of the Regulating Act of 1773 (13 Geo. III, c. 63) the Supreme Court of Judicature at Fort William was declared to have full power and authority to exercise and perform all civil, criminal, admiralty, and ecclesiastical jurisdiction, and to appoint clerks and other ministerial officers, and to form and establish such rules of practice, and such rules for the process of the court, and to do all such things as might be found necessary for the administration of justice and the due execution of all or any of the powers which by the charter might be granted and committed to the court. It was also to be at all times a court of record and a court of oyer and terminer and jail delivery in and for the town of Calcutta and factory of Fort William, and the limits thereof, and the factories subordinate thereto.

Under s. 14 of the same Act, the new charter of the court, and the jurisdiction, powers, and authorities to be thereby established, were to extend to all British subjects who should reside in the kingdoms or provinces of Bengal, Bihar, and Orissa, or any of them, under the protection of the Company, and the court was to have full power and authority to hear and determine all complaints against any of His Majesty's subjects for any crime, misdemeanours, or oppressions, and to entertain, hear, and determine any suits or actions whatsoever against any of His Majesty's subjects in Bengal, Bihar, and Orissa, and any suit.

action, or complaint against any person who at the time when the debt or cause of action or complaint had arisen had been employed by, or been directly or indirectly in the service of, the Company, or of any of His Majesty's subjects.

Section 156 of the East India Company Act, 1793 (33 Geo. III, c. 52), enacted and declared that the power and authority of the supreme court at Calcutta extended to the high seas, and that the court should have full power and authority to inquire, hear, try, examine, and determine, by the oaths of honest and lawful men, being British subjects resident in the town of Calcutta, all treasons, murders, piracies, robberies, felonies, maimings, forestallings, extortions, trespasses, misdemeanours, offences, excesses, and enormities, and maritime causes whatsoever, according to the laws and customs of the Admiralty of England, done, perpetrated, or committed upon any of the high seas, and to fine, imprison, correct, punish, chastise, and reform parties guilty and violators of the laws, in like and in as ample manner to all intents and purposes as the said court might or could do if the same were done, perpetrated, or committed within the limits prescribed by the charter, and not otherwise or in any other manner.

The East India Act, 1797 (37 Geo. III, c. 142), after providing for the erection of courts of judicature at Madras and Bombay, gave those courts, by s. 11, the jurisdiction formerly exercisable by the mayor's court at Madras and at Bombay, or by the courts of oyer and terminer or jail delivery there, and declared, by s. 13, that these courts were to have full power to hear and determine all suits and actions that might be brought against the inhabitants of Madras and Bombay respectively in manner provided by the charter, subject, however, to the proviso in s. 108 of this Digest.

The Government of India Act, 1800 (39 & 40 Geo. III, c. 78), authorized the grant of a charter for the establishment of a supreme court at Madras. It was (s. 2) to have full power to exercise such civil, criminal, admiralty, and ecclesiastical jurisdiction, both as to natives and British subjects, and to be invested with such powers and authorities, privileges and immunities, for the better administration of the same, and to be subject to the same limitations, restrictions, and control within Fort St. George and the town of Madras, and the limits thereof, and the factories subordinate thereto, and within the territories subject to or dependent on the Government of Madras, as the supreme court at Fort William was invested with or subject to within Fort William or the kingdoms or provinces of Bengal, Bihar, and Orissa.

The Indian Bishops and Courts Act, 1823 (4 Geo. IV, c. 71, s. 7), authorized the grant of a charter for the establishment of a supreme court at Bombay with jurisdiction corresponding to that previously given to the supreme court at Madras, and declared, by s. 17, that the supreme courts at Madras and Bombay were to have the same powers as the supreme court at Fort William in Bengal.

In 1828 an Act (9 Geo. IV, c. 74) was passed for improving the administration of criminal justice in the East Indies. The only

sections now unrepealed in this Act are ss. 1, 7, 8, 9, 25, 26, 56, and 110. By s. 1 the Act is declared to extend to all persons and all places, as well on land as on the high seas, over whom or which the criminal jurisdiction of any of His Majesty's courts of justice erected or to be erected within the British territories under the government of the United Company of Merchants of England trading to the East Indies does or shall hereafter extend. Sections 7, 8, and 9, which relate to accessories, and s. 25, which relates to punishments, are apparently superseded as to admiralty cases by the Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict. c. 96), and the Admiralty Jurisdiction (India) Act, 1860 (23 & 24 Vict. c. 88) (see *The Queen Empress* v. *Burton*, I. L. R. 16 Cal. 238), and as to other cases by the Indian Codes.

Section 26 lays down a rule for interpreting criminal statutes, corresponding to the rule embodied for India in the General Clauses Act of 1897, and for the United Kingdom in the Interpretation Act, 1889.

Section 56 extends to British India the provisions previously enacted for England by 9 Geo. IV, c. 31, s. 8, with respect to offences committed in two different places, or partially committed in one place and completed in another, but has been held not to make any person liable to punishment for a complete offence who would not have been so liable before. See *Nga Hoong* v. *Reg.*, 7 Moo. Ind. App. 72, 7 Cox C.C. 489. In this case some Burmese native subjects of the East India Company committed a murder on the Cocos Islands, which were then uninhabited islands in the Bay of Bengal, within the limits of the Company's charter. They were convicted under the Act of 1828 by the supreme court of Calcutta, but the conviction was reversed by the Privy Council. It was held that the place in which the offence was committed was, but the offenders personally were not, within the jurisdiction conferred by the statute, and that the object of the statute was only to apply to the East Indies the enactment previously passed for England.

Section 110 of the Act of 1828 has been repealed, except so far as it is in force in the Straits Settlements.

The Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict. c. 96), enacts that if any person within any colony (which is to include British India, 23 & 24 Vict. c. 88, s. 1) is charged with the commission of any offence committed upon the sea or in any haven, river, creek, or place where the admiral has jurisdiction, or being so charged is brought for trial to any colony, all magistrates, justices of the peace, public prosecutors, juries, judges, courts, public officers, and other persons in the colony are to have the same jurisdiction and authority with respect to the offence as if the offence had been committed upon any waters situate within the limits of the local jurisdiction of the courts of criminal justice of the colony.

The Act further enacts (s. 3) that where any person dies in any colony of any stroke, poisoning, or hurt, having been feloniously stricken, poisoned, or hurt upon the sea, or in any haven, river, creek, or place where the admiral has jurisdiction, or at any place out of the colony, every offence committed in respect of any such case, whether amounting

to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with and punished in the colony as if the offence had been wholly committed in the colony; and if any person is charged in any colony with any such offence resulting in death on the sea, or in any such haven, &c., the offence is to be held for the purposes of the Act to have been wholly committed upon the sea.

The Admiralty Jurisdiction (India) Act, 1860 (23 & 24 Vict. c. 88), provides (s. 2) that where any person within any place in India is charged with the commission of any offence in respect of which jurisdiction is given by the Act of 1849, or, being so charged, is brought for trial under that Act to any place in India, if before his trial he makes it appear that if the offence charged had been committed in that place he could have been tried only in the supreme court of one of the three presidencies in India, and claims to be so tried, the fact is to be certified, and he is to be sent for trial and tried accordingly.

The Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), abolished the supreme courts at Calcutta, Madras, and Bombay, and the Company's courts of appeal at those places, and provided for the establishment by charter of high courts at those places.

Under s. 9, 'each of the high courts to be established under this Act shall have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the presidency for which it is established, as Her Majesty may by such letters patent as aforesaid grant and direct; subject, however, to such directions and limitations as to the exercise of original, civil, and criminal jurisdiction beyond the limits of the presidency towns as may be prescribed thereby, and save as by such letters patent may be otherwise directed; and, subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the high court to be established in each presidency shall have and exercise all jurisdiction, and every power and authority whatsoever in any manner vested in any of the courts in the same presidency abolished under this Act at the time of the abolition of such last-mentioned courts.'

Section 11 declares that the existing provisions applicable to the supreme courts are to apply to the high courts.

The Courts (Colonial) Jurisdiction Act, 1874 (37 & 38 Vict. c. 27), enacts, by s. 3, that when, by virtue of any Act of Parliament, a person is tried in a court of any colony (which by s. 2 is to include British India) for any crime or offence committed upon the high seas or elsewhere out of the territorial limits of the colony and of the local jurisdiction of the court, or, if committed within that local jurisdiction, made punishable by that Act, he shall, upon conviction, be liable to such punishment as might have been inflicted upon him if the crime or offence had been committed within the limits of the colony and of

the local jurisdiction of the court, and to no other. Provided that if the crime or offence is not punishable by the law of the colony in which the trial takes place, the person shall, on conviction, be liable to such punishment (other than capital punishment) as seems to the court most nearly to correspond to the punishment to which he would have been liable if the crime or offence had been tried in England.

The Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), which was passed in consequence of the decision in the *Franconia* case (*R.* v. *Keyn*, 2 Ex. 169), and which extends to India, declares that an *offence committed by a person, whether he is or is not a subject of* Her Majesty, on the open sea within the territorial waters of Her Majesty's dominions, is an offence within the jurisdiction of the admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed the offence may be arrested, tried, and punished accordingly. Proceedings for the trial and punishment of a person who is not a subject of Her Majesty, and is charged with any such offence as is declared by the Act to be within the jurisdiction of the admiral, are not to be instituted in British India except with *the leave of the governor-general or the governor of the presidency.* For the purpose of any offence declared by the Act to be within the jurisdiction of the admiral, any part of the sea within one marine league of the coast, measured from low-water mark, is to be deemed to be open sea within the territorial waters of Her Majesty's dominions.

Under the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), the Legislature of British India may declare certain courts to be colonial courts of admiralty, and courts so declared have the admiralty jurisdiction described in the Act. Under this power the Legislature of India has, by Act XVI of 1891, s. 2, declared the high courts at Calcutta, Madras, and Bombay, as well as the courts of the recorder at Rangoon, the Resident at Aden, and the district court of Karachi, to be colonial courts of admiralty.

The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), provides, by s. 686, that 'where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas or in any foreign port or harbour, or on board any foreign ship to which he does not belong, or, not being a British subject, is *charged with having committed any offence on board any British ship* on the high seas, and that person is found within the jurisdiction of any court in Her Majesty's dominions which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that court shall have jurisdiction to try the offence as if it had been so committed; but nothing in this section is to affect the Admiralty Offences (Colonial) Act, 1849.'

Section 687 of the same Act provides that 'all offences against property or person committed in or at any place, either ashore or *afloat, out of Her Majesty's dominions by any master, seaman,* or apprentice who, at the time when the offence is committed, is, or within three months previously has been, employed in any British

ship, shall be deemed to be offences of the same nature respectively, and be liable to the same punishments respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts and in the same places as if those offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England.'

It seems to follow from these several enactments, and from paras. 29 and 32 of the Charters, that where a chartered high court exercises jurisdiction in respect of—

(1) an offence committed on land, both the procedure and the substantive law to be applied are those of British India, i.e. both the Code of Criminal Procedure and the Penal Code apply;

(2) an offence committed at sea by a native of British India, the position is the same; or,

(3) an offence committed at sea by any other person, whether within territorial waters or beyond them,

the procedure is regulated by British Indian law, but the nature of the crime and the punishment are determined by English law.

See *Queen Empress* v. *Barton*, I. L. R. 16 Cal. 238, and Mayne, *Criminal Law of India*, chap. ii.

(c) The enactment reproduced by this sub-section was probably suggested by the Patna case, as to which see Stephen's *Nuncomar and Impey*, chap. xii. In 1873 certain licensed liquor-vendors moved the high court at Calcutta for a mandamus to compel the Board of Revenue to issue rules prescribing the fees payable for liquor licences, but it was held that the matter related wholly to the revenue, and that therefore by 21 Geo. III, c. 70, s. 8, the high court had no jurisdiction (*Re Audur Chundra Shaw*, 11 Beng. L. R. 250). In a later Madras case (1876) doubts were expressed as to the extent to which the enactment was still in force, and, in particular, whether it had not been repealed except as to land revenue. See *Collector of Sea Customs* v. *Panniar Chithambaram*, I. L. R. 1 Mad. 89. In any case it applies only to the jurisdiction derived from the supreme court, i.e. to the original jurisdiction.

Powers of high court with respect to subordinate courts. [24 & 25 Vict. c. 104, s. 15.]

102. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things; that is to say—

(*a*) call for returns;

(*b*) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

(*c*) make and issue general rules for regulating the practice and proceedings of such courts;

(*d*) prescribe forms for any proceedings in such courts, and for the mode of keeping any books, entries, or accounts by the officers of any such courts; and

(*e*) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of such courts.

Provided that all such rules, forms, and tables require the previous approval, in the case of the high court at Calcutta, of the Governor-General in Council, and in other cases, of the local Government (*a*).

(*a*) As to the relations of the high courts to the subordinate courts, see further above, pp. 153, 163.

Exercise of jurisdiction by single judges or division courts. [24 & 25 Vict. c. 104, ss. 13, 14.]

103.—(1) Subject to any law made by the Governor-General in Council, each high court may by its own rules provide as it thinks fit for the exercise, by one or more judges, or by division courts constituted by two or more judges, of the high court, of the original and appellate jurisdiction vested in the court.

(2) The chief justice of each high court determines what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts.

Power for Governor-General in Council to alter local limits of jurisdiction of high courts. [28 & 29 Vict. c. 15, ss. 3, 4, 6.]

104.—(1) (*a*) The Governor-General in Council may by order transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorize any high court to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court was established (*b*), and also to exercise any such jurisdiction in respect of Christian (*c*) subjects of His Majesty resident in any part of India outside British India (*d*).

(2) The Governor-General in Council must transmit to the Secretary of State an authentic copy of every order made under this section.

(3) His Majesty may signify, through the Secretary of State in Council, his disallowance of any such order, and such

disallowance makes void and annuls the order as from the day on which the governor-general makes known by proclamation or by signification to his council that he has received notification of the disallowance, but no act done by any high court before such notification is invalid by reason only of such disallowance.

(4) Nothing in this section affects any power of the Governor-General in Council in legislative meetings.

(*a*) As to the object and construction of this section, see Minutes by Sir H. S. Maine, No. 45.

(*b*) For orders made under this provision, see Notifications, Nos. 178, 180, 181, of September 23, 1874; Mayne, *Criminal Law of India*, p. 258. It would seem that s. 3 of the Act of 1865 (reproduced by this provision) only empowered the governor-general to make an order transferring any territory from the jurisdiction of one court to the jurisdiction of another, and that the second branch of the section was only to enable the governor-general to authorize the court to which such transfer was made to exercise jurisdiction. If this is so, the Governor-General in Council could not either by order or legislation extend the local and personal jurisdiction of the high court at Allahabad over the province of Oudh, or authorize two of the judges of the high court to sit at Lucknow to try cases arising in Oudh, or empower the Judicial Commissioner of Oudh to transmit cases from Oudh for trial at Allahabad by judges of the high court there. By s. 2 of the Indian High Courts Act, 1911 (1 & 2 Geo. V, c. 18) power is now given in certain cases to alter by letters patent the local jurisdiction of a high court.

(*c*) 'The comprehensive term "Christian" was doubtless used because it might be convenient to give a particular high court matrimonial and testamentary jurisdiction over all Christian subjects.' Minutes by Sir H. S. Maine, Nos. 44, 45.

(*d*) i.e. in Native States. See s. 124.

Exemption from jurisdiction of high court in public capacity. [13 Geo. III, c. 63, ss. 15, 17. 21 Geo. III, c. 70, s. 1. 37 Geo. III, c. 142, s. 11.

105.—(1) Subject to any law made by the Governor-General in Council (*a*), the governor-general and each of the governors of Bengal, Madras, and Bombay, and each of the members of their respective councils, is not—

(*a*) subject to the original jurisdiction of any high court by reason of anything counselled, ordered, or done by any of them, in his public capacity only; nor

(*b*) liable to be arrested or imprisoned in any suit or proceeding in any high court acting in the exercise of its original jurisdiction; nor

39 & 40 Geo. III, c. 79, s. 3. 4 Geo. IV, c. 71, s. 7.]

(c) subject to the original criminal jurisdiction of any high court in respect of any misdemeanour at common law, or under any Act of Parliament, or in respect of any act which if done in England would have been a misdemeanour.

(2) The exemption under this section from liability to arrest and imprisonment extends also to the chief justices and other judges of the several high courts.

(a) The enactments reproduced by this section apply only to the original jurisdiction of the high courts, and are not excepted from the legislative power of the governor-general's council by 24 & 25 Vict. c. 67, s. 22. The exemptions from jurisdiction granted by 21 Geo. III, c. 70, and reproduced in this section, were granted in consequence of the proceedings in the Cossijurah case. See above, p. 54; Mayne, *Criminal Law of India*, 3rd edition, p. 326; and *Jehangir* v. *Secretary of State for India*, I. L. R. 27 Bom. 189.

Written order by governor-general a justification for any act in any court in India. [21 Geo. III, c. 70, ss. 2, 3, 4.]

106. Subject to any law made by the Governor-General in Council, the order in writing of the Governor-General in Council for any act is in any proceeding, civil or criminal, in any high court acting in the exercise of its original jurisdiction, a full justification of the act, except so far as the act extends to any [European] British subject of His Majesty (*a*); but nothing in this section exempts the governor-general, or any member of his council, or any person acting under their orders, from any proceedings in respect of any such act before any competent court in England.

(*a*) The expression in the Act of 1780 is 'British subjects,' which of course must be construed in the narrower sense. As to the circumstances out of which this enactment arose, see above, pp. 54 foll., and Mill's *British India*, iv. 373–375; Cowell's *Tagore Lectures*, p. 72; *Nuncomar and Impey*, ii. 189. As to the limitations formerly imposed on the powers of the Indian Governments in dealing with European British subjects, see *In re Ameer Khan*, 6 B. L. R. 446, and the notes on ss. 63 and 79 of this Digest. The enactments reproduced by this section do not apply to the Governments of Madras and Bombay. They are applied to the existing high courts by the conjoint operation of 39 & 40 Geo. III, c. 79, s. 3; 4 Geo. IV, c. 71, s. 7; and 24 & 25 Vict. c. 104, s. 11, but appear to affect only the original jurisdiction of the high courts.

Procedure in case of oppres-

107.—(1) (*a*) Subject to any law made by the Governor-General in Council, if any person makes a complaint in

writing, and on oath, to the high court at Calcutta of any oppression or injury alleged to have been caused by any order of the governor-general, or any member of his council, and gives security to the satisfaction of the high court to prosecute his complaint by indictment, information, or action before a competent court in Great Britain within two years from the making of the same or from the return into Great Britain of the person complained against, he is entitled to have a true copy of any order of which he complains produced before the high court, and authenticated by the court, and he and the persons against whom he complains may examine witnesses on the matter of the complaint.

sion, &c., by governor-general or his council. [21 Geo. III, c. 70, ss. 5, 6.]

(2) The high court must, if necessary, compel the attendance and examination of witnesses in any such case in the same manner as in other criminal or civil proceedings.

(3) Sections forty to forty-five of the East India Company Act, 1772, apply in the case of proceedings under this section as in the case of the proceedings referred to in those sections.

13 Geo. III, c. 63.

(*a*) The provision reproduced by this section has remained a dead letter from the date of its enactment, appears to be unnecessary, and could be repealed by Indian legislation. It does not apply to the Madras High Court, *Re Wallace*, I. L. R. 8 Mad. 24.

The sections referred to in sub-section (3) give jurisdiction to the Court of King's Bench, now the High Court, and provide for the taking of evidence in India, and its admissibility in England.

Law to be administered.

108. Subject to any law made by the Governor-General in Council, the high courts, in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras, or Bombay, as the case may be, shall, in matters of inheritance and succession to lands, rents, and goods, and in matters of contract and dealing between party and party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or customs having the force of law, decide according to the law or custom to which the defendant is subject.

Law to be administered in cases of inheritance and succession. [21 Geo. III, c. 70, s. 17. 37 Geo. III, c. 142, s. 13.]

This section reproduces the enactments marginally noted so far as they appear to represent existing law. The qualifying words at the beginning of the clause represent existing law. the enactments marginally noted being, under 24 & 25 Vict. c. 67, s. 22, capable of being altered by Indian legislation.

In Warren Hastings's celebrated plan for the administration of justice, proposed and adopted in 1772, when the East India Company first took upon themselves the entire management of their territories in India, the twenty-third rule specially reserved their own laws to the natives, and provided that 'Moulavies or Brahmins' should respectively attend the courts to expound the law and assist in passing the decree.

Subsequently, when the governor-general and council were invested by Parliament with the power of making regulations, the provisions and exact words of Warren Hastings's twenty-third rule were introduced into the first regulation enacted by the Bengal Government for the administration of justice. This regulation was passed on April 17, 1780.

By section 27 of this regulation it was enacted 'that in all suits regarding inheritance, marriage, and caste, and other religious usages or institutions, the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to Gentoos, shall be invariably adhered to.' This section was re-enacted in the following year, in the revised Code, with the addition of the word 'succession.' Section 17 of the Act of 1781 constitutes the first express recognition of Warren Hastings's rule in the English Statute Law. Enactments to the same effect have since been introduced into numerous subsequent English statutes and Indian Acts,—see, for example, 37 Geo. III, c. 142, s. 13; Bombay Regulation IV of 1827, s. 26; Act IV of 1872, s. 5 (Punjab) as amended by Act XII of 1878; Act III of 1873, s. 16 (Madras); Act XX of 1875, s. 5 (Central Provinces); Act XVIII of 1876, s. 3 (Oudh); Act XII of 1887, s. 37 (Bengal, North-Western Provinces, and Assam); Act XI of 1889, s. 4 (Lower Burma). See also clauses 19 and 20 of the Charter of 1865 of the Bengal High Court, the corresponding clauses of the Madras and Bombay Charters, and clauses 13 and 14 of the Charter of the North-Western Provinces High Court.

The effect of 21 Geo. III, c. 70, s. 17, is explained in *Sarkies* v. *Prosonno Mayi Dasi*, I. L. R. 6 Cal. 794 (application for dower by the widow of an Armenian), and *Jagat Mohini Dasi* v. *Dwarkanath Beisakh*, I. L. R. 8 Cal. 582 (where it was held that there was no question of succession or inheritance).

The Indian Contract Act (IV of 1872) contains a saving (s. 2) for any statute, Act, or regulation not thereby expressly repealed. This saving has been held to include the enactment reproduced by this section, under which matters of contract are, within the presidency towns, but not elsewhere, directed to be regulated by the personal law of the party, and thus, paradoxically enough, certain rules of Hindu law have maintained their footing in the last part of British India where they might have been expected to survive. See *Nobin Chunder*

Bannerjee v. *Romesh Chunder Ghose*, I. L. R. 14 Cal. 781, where it was held that the custom of *damdupat* (*Law Quarterly Review* for 1896, p. 45) was still in force in Calcutta. If, however, any native law or custom is clearly inconsistent with the terms of the Contract Act, it would be held to be repealed. See *Madhub Chunder Poramanick* v. *Rajcoomar Doss*, 14 Beng. Law Rep. 76.

The leading case on the extent to which English law has been introduced into India is the *Mayor of Lyons* v. *East India Company* (1836), reported 1 Moo. P. C. 176, and also, with useful explanatory and illustrative matter, 3 State Trials, N. S. 647. The Judicial Committee in this case laid down the principle that the general introduction of English law into a conquered or ceded country does not draw with it such parts as are manifestly inapplicable to the circumstances of the settlement, and decided in particular that the English law incapacitating aliens from holding real property to their own use and transmitting it by devise or descent had never been expressly introduced into Bengal, and that the Statute of Mortmain, 9 Geo. II, c. 36, did not apply to India. See also the famous judgement of Lord Stowell in *The Indian Chief*, (1800) 3 Rob. Adm. 12 at pp. 28, 29 (quoted below, p. 384); *Freeman* v. *Fairlie*, (1828) 1 Moo. Ind. App. 304, 2 State Trials, N. S. 1000; *Advocate-General of Bengal* v. *Ranee Surnomoye Dossee*, (1863) 2 Moo. P. C., N. S. 22 (law as to forfeiture for suicide); and *Ram Coomar Coondoo* v. *Chunder Canto Mookerjee*, (1876) L. R. 2 App. Cas. 186 (law as to maintenance and champerty). And as to the effect of successive charters in introducing English law into India, see above, p. 34; Morley's *Digest*, Introduction, pp. xi, xxiii; and Mr. Whitley Stokes's preface to the first edition of the older statutes relating to India (reprinted in the edition of 1881).

Advocate-General.

Appointment and powers of advocate-general. [53 Geo. III, c. 155, s. 111. 21 & 22 Vict. c. 106, s. 29.]

109.—(1) His Majesty may, by warrant under his Royal Sign Manual, appoint an advocate-general for each of the presidencies of Bengal, Madras, and Bombay (*a*).

(2) The advocate-general for each of those presidencies may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England (*b*).

(*a*) The advocate-general for Bengal is a law officer of the Government of India.

(*b*) See *Secretary of State for India* v *Bombay Landing and Shipping Company*, 5 Bom. H. C. R. O. C. J., 42, and Act V of 1898, ss. 194 (2), 333.

PART X.

ECCLESIASTICAL ESTABLISHMENT.

Jurisdiction of Indian bishops. [53 Geo. III, c. 155, ss. 51, 52. 3 & 4 Will. IV, c. 85, ss. 92, 93, 94.]

110.—(1) The bishops of Calcutta, Madras, and Bombay (*a*) have and may exercise such ecclesiastical jurisdiction and episcopal functions as His Majesty may, by letters patent, direct for the superintendence and good government of the ministers of the Church of England within their respective dioceses.

(2) The Bishop of Calcutta is the metropolitan bishop in India, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury.

(3) Each of the bishops of Madras and Bombay is subject to the Bishop of Calcutta as such metropolitan, and must at the time of his appointment to his bishopric or at the time of his consecration as bishop take an oath of obedience to the Bishop of Calcutta in such manner as His Majesty by letters patent may be pleased to direct (*b*).

(4) His Majesty may, by letters patent, vary the limits of the dioceses of Calcutta, Madras, and Bombay.

[37 & 38 Vict. c. 77, s. 13.]

(5) Nothing in this Digest or in any such letters patent as aforesaid prevents any person who is or has been bishop of any diocese in India from performing episcopal functions, not extending to the exercise of jurisdiction, in any diocese or reputed diocese at the request of the bishop thereof.

(*a*) The bishops of Calcutta, Madras, and Bombay are the only Indian bishops who are referred to in the Acts relating to India. Bishops have also been appointed, under letters patent or otherwise, for Chota Nagpore, Lahore, Lucknow, Nagpur, Rangoon, Tinnevelly, and Travancore, and an assistant bishop has been appointed in Madras.

(*b*) As to these oaths, see 28 & 29 Vict. c. 122, and 31 & 32 Vict. c. 72, s. 14. Under 37 & 38 Vict. c. 77, s. 12, the archbishops of Canterbury or York may, in consecrating any person to the office of bishop for the purpose of exercising episcopal functions elsewhere than in England, dispense with the oath of due obedience to the archbishop.

Power to admit to holy orders.

111.—(1) The Bishop of Calcutta may admit into the holy orders of deacon or priest any person whom he, on examination, deems duly qualified specially for the purpose of taking

on himself the cure of souls, or officiating in any spiritual capacity within the limits of the diocese of Calcutta, and residing therein. [4 Geo. IV, c. 71, s. 6.]

(2) The deposit with the bishop of a declaration of such a purpose, and a written engagement to perform the same, signed by the person seeking ordination, is a sufficient title with a view to his ordination.

(3) It must be distinctly stated in the letters of ordination of every person so admitted to holy orders that he has been ordained for the cure of souls within the limits of the diocese of Calcutta only.

(4) Unless a person so admitted is a British subject, he is not required to take the oaths and make the subscriptions which persons ordained in England are required to take and make (*a*).

(*a*) The enactment reproduced by this section appears to apply only to the Bishop of Calcutta, and is probably unnecessary, as being covered by the general language of the letters patent enabling the Bishop of Calcutta to perform all the functions peculiar and appropriate to the office of bishop within the diocese of Calcutta.

Consecration of person resident in India appointed to bishopric. [3 & 4 Will. IV, c. 85, s. 99.]

112. If any person under the degree of bishop is appointed to the bishopric of Calcutta, Madras, or Bombay, being at the time of his appointment resident in India, the Archbishop of Canterbury, if so required to do by His Majesty by letters patent, may issue a commission under his hand and seal, directed to the two remaining bishops, authorizing and charging them to perform all requisite ceremonies for the consecration of the person so to be appointed.

Salaries and allowances of bishops and archdeacons. [53 Geo. III, c. 155, ss. 49, 50. 4 Geo. IV,

113.—(1) There may be paid to the bishops and archdeacons of Calcutta, Madras, and Bombay, out of the revenues of India, such salaries (*a*) and allowances (*b*) as may be fixed by the Secretary of State in Council, but any power of alteration under this enactment shall not be exercised so as to impose any additional charge on the revenues of India.

c. 71, ss. 3, 4, 5. 3 & 4 Will. IV, c. 85, ss. 90, 96, 97, 98, 100, 101. 5 & 6 Vict. c. 119, ss. 3, 4. 43 Vict. c. 3, ss. 2, 3.]

(2) There are to be paid out of the revenues of India the expenses of visitations of the said bishops, and of the providing a suitable house for the residence of the Bishop of Calcutta (*c*), but no greater sum may be issued on account of those expenses than is allowed by the Secretary of State in Council.

(*a*) As to the existing salaries, see note on s. 80.

(*b*) Pensions, as distinguished from allowances, appear to be still paid under 4 Geo. IV, c. 71, s. 3, 6 Geo. IV, c. 85, s. 15, and 3 & 4 Will. IV, c. 85, s. 96, and not under 43 Vict. c. 3, s. 3. But it seems hardly worth while to reproduce here the specific provisions about bishops' pensions or about payments to representatives of deceased bishops.

(*c*) The statutory obligation to provide a house for the Bishop of Calcutta is exhausted, but it may have been construed as including an obligation to maintain his house.

Furlough rules. [34 & 35 Vict. c. 62.]

114. His Majesty may make such rules as to the leave of absence of the bishops of Calcutta, Madras, or Bombay, on furlough or medical certificate as seem to His Majesty expedient.

Establishment of chaplains of Church of Scotland. [3 & 4 Will. IV, c. 85, s. 102.]

115.—(1) Two members of the establishment of chaplains maintained in each of the presidencies of Bengal, Madras, and Bombay must always be ministers of the Church of Scotland, and are entitled to have from the revenues of India such salary as is from time to time allotted to the military chaplains in the several presidencies.

(2) The ministers so appointed chaplains must be ordained and inducted by the presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland, and are subject to the spiritual and ecclesiastical jurisdiction in all things of the presbytery of Edinburgh, whose judgements are subject to dissent, protest, and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

Saving as to grants to Christians. [3 & 4 Will. IV, c. 85, s. 102.]

116. Nothing in this Digest prevents the Governor-General in Council from granting, with the sanction of the Secretary of State in Council, to any sect, persuasion, or community of Christians, not being of the Church of England or Church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship.

PART XI.

OFFENCES, PENALTIES, AND PROCEDURE.

Certain acts to be misdemeanours: Oppression. [10 Geo. III, c. 47, s. 4.] Wilful disobedience. [33 Geo. III, c. 52, s. 65. 3 & 4 Will. IV, c. 85, s. 80.] Breach of duty. [33 Geo. III, c. 52, s. 65. 3 & 4 Will. IV, c. 85, s. 80.] Trading. [33 Geo. III, c. 52, s. 137. 3 & 4 Will. IV, c. 85, s. 76.] Receiving presents. [13 Geo. III, c. 63, ss. 23, 24, 25. 33 Geo. III, c. 52, ss. 62, 64. 3 & 4 Will. IV, c. 85, s. 76.]

117. If any person holding office under the Crown in India does any of the following things; that is to say,—

(1) If he oppresses any of His Majesty's subjects (*a*) within his jurisdiction or in the exercise of his authority;

(2) If (except in case of necessity, the burden of proving which shall be on him) he wilfully disobeys or wilfully omits, forbears, or neglects to execute any orders or instructions of the Secretary of State;

(3) If he is guilty of any wilful breach of the trust and duty of his office and employment;

(4) If, being the governor-general, or a governor, or a member of the council of the governor-general or of a governor, or being a person employed or concerned in the collection of revenue or the administration of justice in the presidency of Bengal or the province of Bihar and Orissa, he is concerned in or has any dealings or transactions by way of traffic or trade within any of the provinces of India or other parts [otherwise than as a shareholder in any joint-stock company or trading corporation];

(5) If he accepts or receives for his own use, in the discharge of his office, any gift, gratuity, or reward, pecuniary or otherwise [except in accordance with rules made by the Secretary of State as to the receipt of presents], and except in the case of fees paid to barristers, physicians, surgeons, and chaplains in the way of their respective professions;

he is guilty of a misdemeanour.

If a person is convicted of having accepted or received any such gift, gratuity, or reward, the court may order that the gift, gratuity, or reward, or any part thereof, be restored to

the person who gave it, and that the whole or any part of any fine imposed on the offender be paid or given to the prosecutor or informer, as the court may direct (*b*).

(*a*) The expression 'His Majesty's subjects' in the Act of 1770 (10 Geo. III, c. 47, s. 4) was used at a time when it was very doubtful how far the sovereignty of the British Crown extended over natives of India, at all events outside the presidency towns, and was possibly intended to be used in the narrower sense formerly attributed to the expression 'British subjects.' See note (*c*) on s. 63 above.

(*b*) This section reproduces with as much exactness as seems practicable the several enactments noted in the margin. In many cases enactments dealing with the same offence use different language, and apply to different classes of persons. The provisions reproduced from 3 & 4 Will. IV, c. 85, cannot be altered by Indian legislation. See 24 & 25 Vict. c. 67, s. 22.

The words 'otherwise than as a shareholder in any joint-stock company or trading corporation,' and 'except in accordance with rules made by the Secretary of State as to the receipt of presents,' do not occur in the enactments reproduced, but represent the limitations placed in practice on the extremely general language of the enactmnts.

Similar prohibitions of trading or lending money are contained in enactments of the Indian legislatures. See, e. g., Act XV of 1848 (trading by officers of chartered courts); Act II of 1874, s. 10 (by administrator-general); Acts VII of 1878, s. 74, and XIX of 1881, s. 73 (by forest officers); Acts V of 1861, s. 10, XXIV of 1859, s. 19; Bombay Act VII of 1867, s. 11 (by police officers); Acts XI of 1876, s. 34, and V of 1879, s. 3 (by officers of presidency banks); Act XVIII of 1881, s. 155; Bombay Act V of 1879, s. 31; Madras Regulation I of 1803, s. 40; Madras Regulation II of 1803, s. 64; Bengal Regulation II of 1793, s. 18 (by revenue officers); Bengal Regulation XXXVIII of 1793, s. 2 (loans by civil servants).

As to the rules prohibiting the receipt of presents by governors and servants of the Crown in British Colonies, see Todd, *Parliamentary Government in the British Colonies*, p. 153 (second edition).

Loans to native princes. [37 Geo. III, c. 142, s. 28.]

118.—(1) If any British subject, without the previous consent in writing of the Secretary of State in Council or of the Governor-General in Council or of a local Government, by himself or another—

(*a*) lends any money or other valuable thing to any native prince or chief in India; or

(*b*) is concerned in lending money to, or raising or procuring money for, any such native prince or chief, or becomes security for the repayment of any such money; or

(*c*) lends any money or other valuable thing to any other person for the purpose of being lent to any such native prince or chief; or

(*d*) takes, holds, or is concerned in any bond, note, or other security granted by any such native prince or chief for the repayment of any loan or money hereinbefore referred to,

he is guilty of a misdemeanour.

(2) Every bond, note, or security for money, of what kind or nature soever, taken, held, or enjoyed, either directly or indirectly, for the use and benefit of any British subject, contrary to the intent of this section, is void (*a*).

(*a*) The enactment reproduced by this section was passed in 1797 to stop the scandals caused by the lending of money by European adventurers to native princes on exorbitant terms. See above, p. 71. The expression 'British subject,' as used in the Act of 1797, would doubtless be construed in its narrower sense, as not including natives of India.

Prosecution of offences in England. [10 Geo. III, c. 47, s. 4. 13 Geo. III, c. 63, s. 39. 21 Geo. III, c. 70, s. 7.]

119.—(1) If any person holding office under the Crown in India commits any offence referred to in this Digest, or any other crime or offence, the offence may, without prejudice to any other jurisdiction, be inquired of, heard, tried, and determined before His Majesty's High Court of Justice, and be dealt with as if committed in the county of Middlesex.

(2) Every British subject is amenable to all courts of justice in Great Britain of competent jurisdiction to try offences committed in India for any offence committed within India and outside British India as if the offence had been committed within British India.

(3) Every prosecution before a high court in British India in respect of any offence referred to in this section must be commenced within five years after the commission of the offence (*a*).

(*a*) This section is merely an imperfect attempt to reproduce several enactments of the eighteenth century which are still unrepealed, and which, though obsolete as respects procedure, may still be of importance with respect to jurisdiction. Section 67 of 33 Geo. III, c. 52, has been repealed as to Indian courts by Act XI of 1872, but is still unrepealed as to courts in the United Kingdom.

The limitation under 21 Geo. III, c. 70, s. 7 (which applies only to proceedings against the governor-general or a member of his council), is

five years after commission of offence or arrest in England. The limitation under 33 Geo. III, c. 52, s. 141, is six years after commission of offence. There is a three years' limitation under 33 Geo. III, c. 52, s. 162, which is repealed as to British India by Act IX of 1871. But all these limitations, so far as they relate to proceedings in England, appear to be virtually repealed by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61). The six years' limitation appears to survive as to proceedings in India.

The enactments reproduced run as follows:—

'If any person whatsoever employed by or in the service of the said united Company, in any civil or military station, office, or capacity whatsoever in the East Indies, or deriving or claiming any power, authority, or jurisdiction by or from the said united Company, shall, after the passing of this Act, be guilty of oppressing any of His Majesty's subjects beyond the seas within their respective jurisdictions, or in the exercise of any such station, office, employment, power, or authority derived or claimed by, from, or under the said united Company, or shall be guilty of any other crime or offence, such oppressions, crimes, and offences shall and may be inquired of, heard, and determined in His Majesty's Court of King's Bench in England; and such punishments shall be inflicted on such offenders as are usually inflicted for offences of the like nature committed in that part of Great Britain called England; and . . . the same and all other offences committed against this Act may be alleged to be committed, and may be laid, inquired of, and tried in the county of Middlesex' (10 Geo. III, c. 47, s. 4).

. . . 'If any governor-general, president, or governor or council of any of the said Company's principal or other settlements in India, or the chief justice, or any of the judges of the said Supreme Court of Judicature to be by the said new charter established, or of any other court in any of the said united Company's settlements, or any other person or persons who now are, or heretofore have been, employed by or in the service of the said united Company in any civil or military station, office, or capacity, or who have or claim, or heretofore have had or claimed, any power or authority or jurisdiction by or from the said united Company, or any of His Majesty's subjects residing in India, shall commit any offence against this Act, or shall have been or shall be guilty of any crime, misdemeanour, or offence committed against any of His Majesty's subjects, or any of the inhabitants of India, within their respective jurisdictions, all such crimes, offences, and misdemeanours may be respectively inquired of, heard, tried, and determined in His Majesty's Court of King's Bench, and all such persons so offending and not having been before tried for the same offence in India, shall on conviction, in any such case as is not otherwise specially provided for by this Act, be liable to such fine or corporal punishment as the said court shall think fit; and, moreover, shall be liable at the discretion of the said court, to be adjudged to be incapable of serving the said united Company in any office, civil or military; and all and every such crimes, offences, and misdemeanours as aforesaid may be alleged

to be committed, and may be laid, inquired of, and tried in the county of Middlesex' (13 Geo. III, c. 63, s. 39).

'No prosecution or suit shall be carried on against the said governor-general, or any member of the council, before any court in Great Britain (the High Court of Parliament only excepted), unless the same shall be commenced within five years after the offence committed, or within five years after his arrival in England' (21 Geo. III, c. 70, s. 7).

'All His Majesty's subjects, as well servants of the said united Company as others, shall be and are hereby declared to be amenable to all courts of justice, both in India and Great Britain, of competent jurisdiction to try offences committed in India, for all acts, injuries, wrongs, oppressions, trespasses, misdemeanours, offences, and crimes whatever, by them or any of them done or to be done or committed in any of the lands or territories of any native prince or State, or against their persons or properties, or the persons or properties of any of their subjects or people, in the same manner as if the same had been done or committed within the territories directly subject to and under the British Government in India' (33 Geo. III, c. 52, s. 67).

'All penalties, forfeitures, seizures, causes of seizure, crimes, misdemeanours, and other offences, which shall arise or be incurred or made under or shall be committed against this Act, shall be sued for, prosecuted, examined, recovered, and adjudged in any of His Majesty's Courts of Record at Westminster, or in the Supreme Court of Judicature at Fort William in Bengal, or in one of the mayors' courts at Madras or Bombay respectively, in manner following; that is to say, all such pecuniary penalties, and all forfeitures of ships, vessels, merchandise and goods, shall and may be sued for, condemned, and recovered by action, bill, suit, or information, wherein no essoin, protection, wager of law, or more than one imparlance, shall be granted or allowed; and all such seizures, whether of any person or of any ships, vessels, merchandise and goods, and all causes of such seizures, shall be cognizable in such actions, suits, or prosecutions as shall bring into question or relate to the lawfulness or regularity of any such seizure; and all such offences as by this Act are not made punishable by pecuniary penalties or by any forfeiture of goods, but by fine or imprisonment, or both, or are hereby created, without providing any particular punishment, shall be prosecuted by indictment or information as misdemeanours, for breach thereof, and shall be punished by fine or imprisonment, or both, at the discretion of the court in which such prosecution shall, by virtue of this Act, be begun and carried on; and if such prosecution for a misdemeanour shall be in any of the said courts in the East Indies, and the person or persons prosecuted shall be there convicted, it shall be lawful for such court to order, as part or for the whole of the punishment, any such person or persons to be sent and conveyed to Great Britain' (33 Geo. III, c. 52, s. 140).

'Whenever any action, bill, suit, information, or indictment shall be brought or prosecuted in any of His Majesty's Courts of Record at Westminster, for any offence against this Act, whether for a penalty,

forfeiture, or misdemeanour, the offence shall be laid or alleged to have been committed in the city of London or county of Middlesex, at the option of the informer or prosecutor; and all actions, bills, suits, informations, and indictments for any offence or offences against this Act, whether filed, brought, commenced or prosecuted for a penalty or forfeiture, or for a misdemeanour, in any of His Majesty's Courts of Record at Westminster, or in the said Supreme Court, or any such mayor's court as aforesaid, shall be brought and prosecuted within six years next after the offence shall be committed, and a capias shall issue in the first process, and in the case of an offence hereby made punishable by any penalty or forfeiture, such capias shall specify the sum of the penalty or forfeiture sued for; and the person or persons sued or prosecuted for such penalty shall, on such capias, give to the person or persons to whom such capias shall be directed, sufficient bail or security, by natural-born subjects or denizens, for appearing in the court out of which such capias shall issue, at the day or return of such writ, to answer such suit or prosecution, and shall likewise, at the time of such appearance, give sufficient bail or security, by such persons as aforesaid, in the same court, to answer and pay all the forfeitures and penalties sued for, if he, she, or they shall be convicted of such offence or offences, or to yield his, her, or their body or bodies to prison; but if the prosecution shall be for any offence or offences against this Act punishable only as a misdemeanour, then the person or persons against whom such capias shall issue, being thereupon arrested, shall be imprisoned and bailable according to law as in other cases of misdemeanour' (33 Geo. III, c. 52, s. 141).

'All suits and prosecutions for anything done under or by virtue of this Act shall be commenced within the space of three years after the cause of complaint shall have arisen, or, being done in Great Britain, in the absence of any person beyond sea aggrieved thereby, then within the space of three years next after the return of such person to Great Britain' (33 Geo. III, c. 52, s. 162).

Provision as to persons suspected of dangerous correspondence. [33 Geo. III, c. 52, ss. 45, 46.]

120.—(1) The Governor-General in Council and the Governors in Council of Bengal, Madras, and Bombay respectively may issue warrants for securing and detaining in custody any person suspected of carrying on mediately or immediately any illicit correspondence dangerous to the peace or safety of any part of British India with any prince, rajah, zemindar, or other person having authority in India, or with the commander, governor, or president of any factory or settlement established in India by a European power, or any correspondence contrary to the rules and orders of the Secretary of State or of the Governor-General in Council or Governor in Council.

(2) If on examination taken on oath in writing of any credible witness before the Governor-General in Council or the Governor in Council there appear reasonable grounds for the charge, the governor-general or governor may commit the persons suspected or accused to safe custody, and must within a reasonable time, not exceeding five days, cause to be delivered to him a copy of the charge or accusation on which he is committed.

(3) The person charged may deliver his defence in writing, with a list of such witnesses as he may desire to be examined in support thereof.

(4) The witnesses in support of the charge and of the defence must be examined and cross-examined on oath in the presence of the person accused, and their depositions and examination must be taken down in writing.

(5) If, notwithstanding the defence, there appear to the Governor-General in Council or Governor in Council reasonable grounds for the charge or accusation and for continuing the confinement, the person accused is to remain in custody until he is brought to trial in India or sent to England for that purpose.

(6) All such examinations and proceedings or attested copies thereof under the seal of the high court must be sent to the Secretary of State as soon as may be in order to their being produced in evidence on the trial of the person accused in the event of his being sent for trial to England.

(7) If any such person is to be sent to England the governor-general or governor, as the case may be, must cause him to be sent to England at the first convenient opportunity, unless he is disabled by illness from undertaking the voyage, in which case he must be so sent as soon as his state of health will safely admit thereof.

(8) The examinations and proceedings transmitted in pursuance of this section are to be deemed and received as evidence in all courts of law, subject to any just exceptions as to the competency of the witnesses (*a*).

(*a*) The provisions of the Act of 1793, reproduced by this section have never been repealed. But no record has been found of any case in which they have been put into operation, and the cases which they were mainly designed to meet could probably be dealt with under other enactments. Powers of arrest and imprisonment for political offences are given by Bengal Regulation III of 1818, Madras Regulation II of 1819, Bombay Regulation XXV of 1827, Act XXXIV of 1850 (the State Prisoners Act, 1850), and Act III of 1858 (the State Prisoners Act, 1858). See *In the matter of Ameer Khan*, 6 Bengal Law Rep. 392. The Bombay Regulation was used in 1886 for the arrest of Dhuleep Singh at Aden, and has since (in 1897) been put in force in connexion with seditious proceedings at Poona.

PART XII.

SUPPLEMENTAL.

Savings.

Saving as to certain rights and powers. [3 & 4 Will. IV, c. 85, s. 51. 24 & 25 Vict. c. 67, s. 52.]

121.—(1) Nothing in this Digest derogates from or interferes with the rights vested in His Majesty, or the powers vested in the Secretary of State in Council, in relation to the Government of British India, by any law in force at the passing of the Indian Councils Act, 1861.

(2) Nothing in this Digest affects the power of Parliament to control the proceedings of the Governor-General in Council or of any local Government, or to repeal or alter any law or regulation made by any authority in British India, or to legislate for British India and the inhabitants thereof (*a*).

(*a*) These savings, reproduced from the Acts of 1833 and 1861, are important as showing that the parliamentary enactments relating to India were never intended to be and cannot be construed as a complete code of the powers and rights exercisable by or with reference to the Government of India.

Treaties, contracts, and liabilities of East India Company. [21 & 22 Vict. c. 106, s. 67.]

122.—(1) All treaties made by the East India Company are, so far as they are in force, binding on His Majesty (*a*).

(2) All contracts made and liabilities incurred by the East India Company may, so far as they are still outstanding, be enforced by and against the Secretary of State in Council.

(*a*) A treaty, unless confirmed by legislation, cannot affect private rights of British subjects in times of peace. *Walker* v. *Baird*, [1892] A. C. 492, 496.

123. All orders, regulations, and directions lawfully made or given by the Court of Directors of the East India Company, or by the Commissioners for the Affairs of India, are, so far as they are in force, to be deemed to be orders, regulations, and directions made by the Secretary of State under the Government of India Act, 1858.

Orders of East India Company. [21 & 22 Vict. c. 106, s. 59.]

Laying of documents before Parliament.

123A. All proclamations, regulations and rules made under the Indian Councils Act, 1909, other than rules made by a Lieutenant-Governor for the more convenient transaction of business in his Council, must be laid before both Houses of Parliament as soon as may be after they are made.

Laying of certain proclamations, &c., before Parliament. [9 Edw. VII. c. 4, s. 7.]

Definitions.

124. In this Digest the following expressions, unless the contrary intention appears, have the meanings hereby respectively assigned to them; namely:

Definitions.

(1) The expression 'British India' means all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India (*a*).

(2) The expression 'India' means British India together with any territories of any native prince or chief under the suzerainty of His Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India (*a*).

(3) The expression 'province' means any part of British India the executive government of which is administered by a Governor in Council, lieutenant-governor in Council, lieutenant-governor, or chief commissioner, and includes a presidency (*b*).

(4) The expression 'local Government' means a Governor in Council, lieutenant-governor in Council, lieutenant-governor, or chief commissioner (*c*).

(5) The expression 'high court' means a court established for some part of British India by His Majesty's letters patent (*d*).

(6) The expression 'Indian Civil Service' means the service so designated in the rules now in force.

(7) The expression 'office' includes place and employment

52 & 53 Vict. c. 63. The Interpretation Act, 1889, applies to the construction of this Digest (*e*).

(*a*) The definitions of 'British India' and 'India' follow those adopted in the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 18), and in the Indian General Clauses Act, 1897 (X of 1897, s. 3 (7), (27)).

British India corresponds to the territories which were in the Act of 1858 described as 'the territories in the possession of or under the government of the East India Company,' and which were then held by the Company in trust for the Crown.

Aden is part of British India, and is included in the Bombay presidency. See the Aden Laws Regulation, 1891 (II of 1891).

India, as distinguished from British India, includes also the territories of Native States, which used to be described in Acts of Parliament as 'the dominions of the princes and States of India in alliance with Her Majesty,' or in similar terms. See, e.g., 24 & 25 Vict. c. 67, s. 22; 28 & 29 Vict. c. 15, s. 3; 28 & 29 Vict. c. 17, s. 1; 53 & 54 Vict. c. 37, s. 15.

The expression 'suzerainty' is substituted by the Interpretation Act for the older expression 'alliance,' as indicating more accurately the relation between the rulers of these States and the British Crown as the paramount authority throughout India. It is a term which is perhaps incapable of precise definition, but which is usefully employed to indicate the political authority exercised by one State over another, and approximating more or less closely to complete sovereignty. See Holland's *Jurisprudence*, ed. 7, pp. 45, 347, and below, Chapter V.

The territories of the Native States are not part of the dominions of the King, but their subjects are, for international purposes, in the same position as British subjects. For instance, under the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37, s. 15), where an order made in pursuance of the Act extends to persons enjoying His Majesty's protection, that expression is to be construed as including all subjects of the several princes and States in India. And it is possible that a subject of a Native State would not be held to be an 'alien' within the meaning of the Naturalization Act, 1870 (33 & 34 Vict. c. 14), so as to be capable of obtaining a certificate of naturalization under that Act.

The expression 'prince or chief' seems wide enough to include the ruler or head-man, by whatever name called, of any petty tribe or clan or group, however rudimentary may be its political organization. But of course political authority may be so widely distributed among

head-men or elders, or members of the tribe or group, as to make the task of finding an individual or collective 'sovereign' very difficult. This difficulty is to some extent met by s. 2 of the Imperial Foreign Jurisdiction Act (53 & 54 Vict. c. 37).

It has sometimes been found difficult to determine whether a particular territory ought to be treated as part of British India, or of India in the wider sense, and questions have arisen as to the status of such territories as Kathiawar, Cooch Behar, and the tributary mahals of Orissa. See *Empress* v. *Keshub Mahajun*, (1882) I. L. R. 8 Cal. 985, and *Re Bichitramund*, (1889) I. L. R. 16 Cal. 667. The position of Kathiawar was carefully considered in two cases which came together in 1905 before the Judicial Committee of the Privy Council, *Hemchand Devchand* v. *Azam Sakarlal Chhotamlal* and *The Taluka of Kotda Sangani* v. *The State of Gondal*. A. C. [1906] 212. Both these cases were, in effect, appeals from decisions of British political agents exercising jurisdiction in Kathiawar. It was decided (1) that Kathiawar is not as a whole within the King's dominions; (2) that the right of appeal to the King in Council from British courts exercising jurisdiction outside British dominions is not limited to British subjects; (3) that the question whether an appeal lies to the King in Council from the decision of a British political agent in Kathiawar depends on whether the jurisdiction exercised is political or judicial in its character. In the two cases in question the jurisdiction was held to be political, and the appeals were dismissed.

India in the wider sense would not include French or Portuguese territory.

The expression 'British India,' as defined above, includes the land down to low-water mark, and would ordinarily include the territorial waters of British India, though not the high seas beyond (*R.* v. *Edmonstone*, (1879) 7 Bom. Cr. Ca. 109). In 1871 the Bombay High Court held that the provisions of the Indian Penal Code applied to offences committed within a marine league of the shore of British India (*R.* v. *Kastya Rama*, 8 Bom. Cr. Ca. 63). But this decision is now affected by the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), as to which see the note on s. 101.

For fiscal and protective purposes the Indian Legislature has made laws for Indian waters. See, e.g., the Transport of Salt Act, 1879 (XVI of 1879), and the Obstructions in Fairways Act, 1881 (XVI of 1881).

The settlements of Prince of Wales Island, Singapore, and Malacca were, in pursuance of the Straits Settlements Act, 1866 (29 & 30 Vict. c. 115, s. 1), removed from British India and placed under the Colonial Office.

(*b*) 'Province' is defined in the Indian General Clauses Act (X of 1897, s. 3 (43)) as meaning the territories for the time being administered by any local Government.

(*c*) 'Local Government' is defined in the Indian General Clauses Act (X of 1897, s. 3 (29)) as meaning 'the person authorized by law

to administer executive government in the part of British India in which the Act or regulation containing the expression operates,' and as including a chief commissioner.

There are at present fifteen local Governments in British India, namely, the Governor of Bengal in Council; the Governor of Madras in Council; the Governor of Bombay in Council; the Lieutenant-Governor of Bihar and Orissa; the Lieutenant-Governor of the United provinces of Agra and Oudh; the Lieutenant-Governor of the Punjab; the Lieutenant-Governor of Burma; the Chief Commissioner of Assam; the Chief Commissioner of Delhi; the Chief Commissioner of the Central Provinces; the Chief Commissioner of British Baluchistan; the Chief Commissioner of Ajmere; the Chief Commissioner of Coorg; the Chief Commissioner of the North-West Frontier Province; and the Chief Commissioner of the Andaman Islands. Under Act V of 1868 the powers of a local Government for certain purposes may be delegated to the commissioner in Sindh.

(*d*) This definition only includes the chartered high courts at Calcutta, Madras, Bombay, and Allahabad, and any chartered high courts which may be established under the Indian High Courts Act, 1911. The definition in the Indian General Clauses Act (X of 1897, s. 3 (24)) is wider, and includes the various judicial commissioners and the chief court of the Punjab.

(*e*) In a Digest of this kind it seems convenient to adopt the same general rules of construction as are applied to recent Acts of Parliament. The application of the Interpretation Act makes the definitions of 'British India' and 'India,' strictly speaking, superfluous, but they are set out on account of their importance.

SUPPLEMENTAL NOTES.

1. *Omissions from Digest.*

The following enactments have not been reproduced in this Digest, on the ground of either never having come into operation, or having ceased through change of circumstances to be in operation:—

The power given by 13 Geo. III, c. 63, s. 9, for the Governor-General in Council to suspend the Government of Madras or Bombay in case of disobedience.

The express grant by 21 Geo. III, c. 70, s. 17, of jurisdiction over all inhabitants of Calcutta.

The saving in 21 Geo. III, c. 70, s. 18, for the rights of fathers of Hindu and Mahomedan families and rules of caste.

The procedure under 24 Geo. III, sess. 2, c. 25, ss. 66 and 77, for constituting a special court for the trial of Indian offenders. This machinery has never been put into force.

The provisions in 33 Geo. III, c. 52, s. 41, as to the duty of local Governments in the case of conflict between the orders of the Governor-General in Council and the orders of the Directors of the East India Company.

The provision in 33 Geo. III, c. 52, s. 70, as to forfeiture of office after absence for five years.

The requirement in 37 Geo. III, c. 142, to send to the Board for Affairs of India the forms and rules made in India as to process in the recorders' courts.

The enactments in 53 Geo. III, c. 155, ss. 42, 43, as to the control of the India Board over colleges and seminaries in India, and as to the provision to be made for public education in India.

The provision in 53 Geo. III, c. 155, ss. 85, 86, as to the precedence of civil servants.

The provisions in 6 Geo. IV, c. 85, s. 5, as to the payments to be made in the case of judges and bishops.

The provision in 3 & 4 Will. IV, c. 85, for dividing the Presidency of Fort William into two presidencies.

The provision in section 56 of the same Act for the government of Bengal by a Governor in Council.

The express power given by section 86 of the same Act to hold land in India.

2. *Powers of Governor-General to grant Military Commissions.*

Questions have sometimes been raised as to the power of the governor-general, either alone or in council, to grant military commissions, with command over officers and men of the regular forces, and as to the effect of commissions so granted, and as the answer to the question depends on a series of enactments and other documents, it seems worth while to state it somewhat fully.

Before the passing of the Government of India Act, 1858 (21 & 22 Vict. c. 106), the Governor-General in Council granted commissions to officers of the troops of the East India Company.

The power to grant such commissions may be presumed to have been derived from the charters and Acts relating to the East India Company.

According to Sir George Chesney (*Indian Polity*, 3rd edition, ch. xii), the first establishment of the Company's Indian army may be considered to date from 1748, when a small body of sepoys was raised at Madras, after the example set by the French, for the defence of that settlement, during the course of the war which had broken out four years previously between France and England. At the same time a European force was raised, formed of such sailors as could be spared from the ships on the coast, and of men smuggled on board the Company's vessels in England by the crimps. An officer (Major Lawrence) was appointed by a commission from the Company to command their forces in India.

In 1754 an Act (27 Geo. II, c. 9) was passed for punishing mutiny and desertion of officers and men in the service of the United Company of Merchants of England trading to the East Indies, and for the punishment of offences committed in the East Indies, and at the island of

St. Helena. This Act recites that for the safety and protection of their settlements, and for the better carrying on of their trade, the East India Company, at their own costs and charges, do maintain and keep a military force for the garrison and defence of their settlements, factories, and places, and that it is requisite for the retaining of such forces in their duty that an exact discipline be observed, and that soldiers who shall mutiny or stir up sedition, or shall desert the Company's service, shall be brought to a more exemplary and speedy punishment than the usual forms of law allow. The Act then proceeds to make officers and soldiers of the Company's forces subject to punishment by court-martial for military offences, and authorizes the grant of a commission or warrant under the King's Royal Sign Manual, by virtue of which the Court of Directors of the Company may authorize their president and council to appoint courts-martial.

The Act does not, in so many words, give the Company power to grant commissions; and Brougham, in the course of his argument in the case of *Bradley* v. *Arthur* (2 State Trials, N. S. p. 190), comments on the avoidance of the word 'commission' in the statute. The expression used is 'that if any person *being mustered or in pay as an officer*, or who is or shall be enlisted, or in the Company's pay as a soldier,' does so and so, he is to be tried by court-martial.

The statement that the word 'commission' does not appear in the statute is not strictly accurate, for it is used in section 5; but there is nothing to show that the commissions there referred to are commissions in the army of the East India Company.

Nor does Brougham appear to have been accurate in saying that the Act was a temporary Act annually renewed. It appears to have been a permanent Act, but ceased to have any operation after the abolition of the East India Company's army, and was formally repealed by the Statute Law Revision Act of 1867.

There appear to have been always doubts as to the exact status conferred by military commissions in the Company's army. In 1795 Lord Cornwallis was appointed commander-in-chief as well as Governor-General of India, and was thus invested with the supreme military as well as the supreme authority. One of the objects with which this combination of powers was conferred on him was to enable him to remove or mitigate the jealousies and friction between the King's officers and the Company's officers, and with this object he granted, in 1788 or 1789, brevet commissions in the royal service to all the Company's officers, with dates corresponding to their substantive commissions (*Cornwallis Correspondence*, 2nd edition, vol. ii. p. 428; Chesney, *Indian Polity*, ch. xii). This arrangement, according to Sir G. Chesney, was continued until the abolition of the Company's government in 1858, brevet commissions being granted under powers delegated for that purpose by the Crown to the Commander-in-Chief in India. Without such brevet commission it is at least doubtful whether officers of the Company's forces could have exercised any command over officers or soldiers of the regular forces.

By the Government of India Act, 1858 (21 & 22 Vict. c. 106), the government of India was transferred to the Crown. But by s. 30 of that Act it was provided that all appointments to offices, commands, and employments in India, and all promotions which by law or under regulations, usage, or custom were then made by any authority in India, should continue to be made in India by the like authority and subject to the qualifications, conditions, and restrictions then affecting such appointments respectively.

The Act 23 & 24 Vict. c. 100 (1860), after reciting that 'it is not expedient that a separate European force should be continued for the local service of Her Majesty in India,' enacted that 'so much of the Act of Parliament of the twenty-second and twenty-third of Her Majesty, chapter twenty-seven, intituled 'An Act to repeal the thirty-first section of sixteen and seventeen Victoria, chapter ninety-five, and to alter the limit of the number of European troops to be maintained for local service in India,' and of any former Act or Acts of Parliament as renders it lawful for the Secretary of State in Council from time to time to give such directions as he may think fit for raising such number of European forces as he may judge necessary for the Indian Army of Her Majesty, is hereby repealed.' This Act received the Royal Assent on August 20, 1860.

Sir Charles Wood, when Secretary of State for India, by his Dispatch, No. 461, dated December 16, 1862, informed the governor-general that local commissions should in all practicable cases be bestowed by the field-marshal commanding-in-chief on the recommendation of the Government of India preferred through the Secretary of State, but that in any case commissions which the Government of India might consider it necessary to bestow without previous reference should be subject to the confirmation of the Crown applied for through the same channel.

Sir Charles Wood, by his Dispatch, No. 351, dated November 16, 1864, informed the Government of India that, in view of royal commissions being granted to all officers of Her Majesty's Indian forces and staff corps, the issue of commissions either by local Governments or by the commander-in-chief was unnecessary.

The Indian Volunteers Act, 1869 (XX of 1869), which is amended by Act X of 1896, provides for the formation and dissolution and for the good order and discipline of volunteer corps in India. The Act is silent as to the grant of commissions to volunteer officers, but provides (s. 14) that the commissions are to cease on retirement or dismissal. In practice, however, commissions to officers of volunteers under this Act are signed either by the governor-general or by the Governor-General in Council Members of a corps of volunteers under the Indian Act are, on being called out for duty, subject, by virtue of s. 8 of that Act, to military law under the Army Act, and by virtue of s. 177 of the Army Act would be so subject, whether within or without the limits of India.

The regular forces are under the command of the Crown, and the

military rank and military powers of command of officers of the regular forces depend solely on commissions from the Crown, issued in accordance with the provisions of 25 & 26 Vict. c. 4.

The commission of a commander-in-chief usually authorizes him to grant commissions until the pleasure of the Crown is signified, and sometimes gives him absolute powers to grant commissions. Commissions so granted are granted by a military and not by a civil authority, and by virtue of express authority from the King. The commander-in-chief in India is not at present authorized by his commission to sign commissions on behalf of the King.

Before 1871 commissions to officers of the auxiliary forces in the United Kingdom were granted by the lieutenants of counties in England and Scotland and by the Lord-Lieutenant in Ireland. The power to grant these commissions was given by statute, and the rank and powers of command of the commissioned officers were also regulated by statute (see, e.g., 26 & 27 Vict. c. 65, s. 5). Without such a statutory provision they would have had no command over the regular forces. But by s. 6 of the Regulation of the Forces Act, 1871 (34 & 35 Vict. c. 86), it was enacted that all officers in the militia, yeomanry, and volunteers of England, Scotland, and Ireland should hold commissions from Her Majesty, to be prepared, authenticated, and issued in the manner in which commissions of officers in Her Majesty's land forces are prepared, authenticated, and issued according to any law or custom for the time being in force. Accordingly all such commissions are now granted directly or indirectly by the Crown.

The power of granting military commissions may be delegated by the Crown, but the power must apparently be given in express terms (see *Bradley* v. *Arthur*, 2 State Trials, N. S. 171), and it has been considered doubtful whether it could be given to a civilian (see Clode, *Military Forces of the Crown*, vol. ii, p. 72, and *Bradley* v. *Arthur*, 2 State Trials, N. S. 183, 196, 202–203). Certainly in India, down to 1859, all commissions giving command over the regular forces were given by the military authority—the commander-in-chief, and not the governor-general. However, Sir Bartle Frere, when High Commissioner for South Africa, was empowered by letters patent (dated October 10, 1878) to appoint any officer of the regular troops serving in South Africa to local and temporary rank and command therein, and by subsequent letters patent (dated March 22, 1879) to appoint any officer of the local forces serving in South Africa to local and temporary rank and command in the regular army. But this was a special appointment in time of war, and outside the colonial limits. 'Local forces' may have meant forces within ss. 175 (4) and 176 (3) of the Army Act, or colonial forces within s. 177 of the Army Act, or both. As to the powers ordinarily exercisable by colonial governors in military matters, see Todd, *Parliamentary Government in the British Colonies* (second edition), p. 41.

The existing Army Act (44 & 45 Vict. c. 58) does not confer on the Governor-General of India any power to grant commissions or recognize any such power. Indeed, the Act treats him throughout as a civil and

not a military officer (see, e.g., ss. 54, 62, 65. 94, 130, 134, 169). If his commission were to confer on him the powers of a commander-in-chief, *he might, no doubt*, by virtue of those powers, grant military commissions such as were granted by Lord Cornwallis in his capacity of commander-in-chief; but otherwise he would appear not to have, by virtue of his office, power to grant any military command over officers of the regular forces.

In 1866 a provision was inserted in s. 52 of the Mutiny Act to the effect that, notwithstanding anything in the Act 23 & 24 Vict. c. 100, any person authorized in that behalf in India might enlist and attest, within the local limits of his authority, any person desirous of enlisting in Her Majesty's Indian forces. This provision was re-enacted by s. 52 of each successive annual Mutiny Act, and was eventually reproduced by s. 180 (1) (*h*) of the existing Army Act, which provides that persons may be *enlisted and attested in India for medical service or for other special* service in Her Majesty's Indian forces for such periods, by such persons, and in such manner as may be from time to time authorized by the Governor-General of India. Enlistment is the process for taking men, not officers, into the army, and the section says nothing about the grant of commissions.

Section 71 of the Army Act enacts that 'for the purpose of removing doubts as to the powers of command vested or to be vested in officers and others belonging to Her Majesty's forces, it is hereby declared that Her Majesty may, in such manner as to Her Majesty may from time to time seem meet, make regulations as to the persons to be invested as officers, or otherwise, with command over Her Majesty's forces, or any *part thereof, and as to the mode in which such command* is to be exercised; provided that command shall not be given to any person over a person superior in rank to himself.' This provision was first enacted in 1881, when the old enactments as to the rank and command of officers of the military and other auxiliary forces were repealed, and its object was to provide for officers of the regular forces exercising command over officers of the auxiliary forces, and vice versa.

In these circumstances it would appear that any forms of appointment, whether described as commissions or otherwise, granted by the governor-general orby the Governor-General in Council, could not confer the status and powers of command conferred by commissions under the signature of the King. No express power to grant such commissions is conferred *on* the governor-general by the existing form of his warrant of appointment.

SCHEDULES

FIRST SCHEDULE.

OFFICIAL SALARIES.[1]

Session and Chapter.	*Officer.*	*Maximum Salary.*
3 & 4 Will. IV, c. 85, s. 76.	Viceroy and Governor-General.	Rs. 2,56,000.
3 & 4 Will. IV, c. 85, s. 76.	Governors of Bengal, Madras and Bombay.	Rs. 1,28,000.
16 & 17 Vict. c. 95, s. 35.	Commander-in-Chief.	Rs. 1,00,000.
16 & 17 Vict. c. 95, s. 35.	Lieutenant-Governor.	Rs. 1,00,000.
3 & 4 Will. IV, c. 85, s. 76.	Members of Governor-General's Council.	*No statutory maximum.*
3 & 4 Will. IV, c. 85, s. 76.	Member of Council, Madras and Bombay.	Rs. 64,000.

SECOND SCHEDULE.[2]

OFFICES RESERVED TO THE INDIAN CIVIL SERVICE.

Part I.—General.

1. Secretaries, joint secretaries, deputy secretaries, and under secretaries to the several Governments in India, except the secretaries, joint secretaries, deputy secretaries, and under secretaries in the Army, Marine, and Public Works Departments.

2. Accountants-general.

3. Members of the Boards of Revenue in the presidencies of Bengal and Madras, the United Provinces of Agra and Oudh, and the Province of Bihar and Orissa.

4. Secretaries to those Boards of Revenue.

5. Commissioners of customs, salt, excise, and opium.

6. Opium agent.

[1] See s. 80 of Digest.

[2] See s. 93 of Digest.

Part II.—Offices in the provinces which were known in the year 1861 *as 'Regulation Provinces.'*

7. District and sessions judges.
8. Additional district or sessions judges and assistant sessions judges.
9. District magistrates.
10. Joint magistrates.
11. Assistant magistrates.
12. Commissioners of revenue.
13. Collectors of revenue, or chief revenue officers of districts.
14. Assistant collectors.[1]

[1] See s. 93 of Digest. This is the schedule appended to the Act of 1861 (24 & 25 Vict. c. 54) as modified in pursuance of suggestions made by the Government of India for the purpose of adapting the nomenclature to existing conditions.

TABLE OF COMPARISON BETWEEN STATUTORY ENACTMENTS AND DIGEST

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
10 Geo. III,	**The East India Company Act, 1770.**	
c. 47, s. 2.	Persons in service of Company transporting warlike stores.	Not reproduced. Virtually repealed by 33 Geo. III, c. 52, s. 146.
s. 3.	Balloting by Court of Directors of East India Company.	Not reproduced. Repealed as to U. K. by S. L. R. Act [1], 1887.
s. 4.	Trial in England of Company's servants committing offences in India.	Extended by 13 Geo. III, c. 63, s. 39, to all offenders. Reproduced by ss. 117 (1), 119.
s. 5.	In action against East India Company, defendant may plead the general issue.	Not reproduced. Repealed as to U. K. by 56 & 57 Vict. c. 61 (Public Authorities Protection Act, 1893).
s. 6.	The Act to be a public Act.	Not reproduced. Repealed as to U. K. by S. L. R. Act, 1887.
s. 7.	In action against East India Company in England, defendant to give notice of substance of defence.	Not reproduced. Repealed as to U. K. by 56 & 57 Vict. c. 61.
13 Geo. III, c. 63.	**The East India Company Act, 1772.**	
	. . . . .	
Preamble.		Not reproduced. Repealed as to U. K. by S. L. R. Act, 1887.
s. 1.	Number of directors of East India Company.	
s. 2.	. . . . .	

[1] S. L. R. Act = Statute Law Revision Act. Acts under this name are periodically passed for the purpose of removing from the Statute Book enactments which have been virtually repealed or have otherwise ceased to be in force as law.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
13 Geo. III, c. 63, s. 3–5.	Qualification for votes of proprietors of East India Company for election of directors, &c.	Not reproduced. Repealed as to U. K. by S. L. R. Act, 1887.
s. 6.	Oath to be taken by proprietors of East India Company on election of directors, &c.	
s. 7.	Government of Bengal vested in governor-general and four councillors.	Not reproduced. Superseded by 3 & 4 Will. IV, c. 85, s. 39.
s. 8.	Difference of opinion in gover nor-general's council.	Reproduced by s. 44 (1).
s. 9.	President and Council of Madras, Bombay, and Bencoolen—	Repealed in part, S. L. R. Act, 1892.
	not to make war or treaty without orders of Governor General in Council or East India Company.	Reproduced by s. 49 (2). Bencoolen has been given to the Dutch.
	liable to suspension if they disobey.	Modified by 33 Geo. III, c. 52, s. 43. The power for the Governor-General in Council to suspend a local Government in case of disobedience has been omitted as having been made unnecessary by change of circumstances.
	to obey orders of Governor-General in Council.	Reproduced by s. 49 (1).
	to keep Governor-General in Council informed of their proceedings.	Repealed by S. L. R. Act, 1892.
	Governor-General in Council —to obey orders of East India Company.	Reproduced by s. 36 (2).
	to correspond with East India Company.	Reproduced by s. 17.
	Court of Directors to send to Treasury copies of correspondence relating to revenues.	Repealed by S. L. R. Act, 1892.
s. 10.	Appointment of first Governor-General and members of his Council.	Not reproduced. Spent. Repealed in part, S. L. R. Act, 1892.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
13 Geo. III, c. 63, s. 10 (*continued*).	Appointment and removal of Governor-General and members of his Council.	Not reproduced. Superseded as to Governor-General by 21 & 22 Vict. c. 106, s. 2, and as to Council by 32 & 33 Vict. c. 97.
s. 11.	Provisions of section 10, when to take effect.	Spent. Repealed as to U. K. by S. L. R. Act, 1887.
s. 12.	Saving of power to make appointments.	Repealed, S. L. R. Act, 1892.
ss. 13, 14.	Constitution, powers, and jurisdiction of Supreme Court, Calcutta.	Not reproduced. The supreme courts were abolished, and their powers and jurisdiction vested in the high courts, by 24 & 25 Vict. c. 104, ss. 8, 9. S. 101 saves the powers and jurisdiction.
s. 15.	Offences by Governor-General and members of his Council not triable by Supreme Court, Calcutta.	Reproduced by s. 105 (*c*).
s. 16.	Jurisdiction of Supreme Court, Calcutta, as to contracts.	Repealed by Indian Act XIV of 1870, and S. L. R. Act, 1892.
s. 17.	Governor-General, members of his Council, and judges of Supreme Court not to be arrested or imprisoned by that Court.	Reproduced by s. 105 (1) (*b*), and (2).
s. 18.	Appeal to King in Council.	Repealed, S. L. R. Act, 1892.
s. 19.	Charter of mayor's court, Calcutta.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
ss. 20–22.	. . . . .	Repealed as to U.K. by S.L.R. Act, 1887. Repealed or superseded as to India by 3 & 4 Will. IV, c. 85, s. 76, and by Indian enactments.
s. 23.	Governor-General, his Council, and judges of Supreme Court, Calcutta, not to receive gifts.	Reproduced by s. 117 (5). The words as to a promise of a gift are omitted. S. 117 (5), following 3 & 4 Will. IV, c. 85, s. 76, is limited to the acceptance of gifts by an official in the discharge of his office.
s. 24.	No official to receive gift from native.	

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
13 Geo. III, c. 63, s. 25.	Exception as to fees of barristers, &c.	Reproduced by s. 117 (5).
ss. 26–29.	. . . . .	Repealed, 24 Geo. III, sess. 2, c. 25, s. 47, and 33 Geo. III, c. 52, s. 146.
ss. 30, 31.	. . . . .	Repealed as to U.K. by S.L.R. Act, 1887, as to India by Acts XXVIII of 1855 and XIV of 1870.
s. 32.	. . . . .	Repealed, 33 Geo. III, c. 52, s. 146.
s. 33.	Power of Indian courts to punish East India Company's servants for breach of trust, &c.	Not reproduced. Repealed, Indian Act XIV of 1870.
ss. 34, 35.	. . . . .	Repealed as to U.K. by S.L.R. Act, 1887. S. 34 rep. Indian Act X of 1875.
s. 36.	Power of Governor-General in Council to make laws.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 37.	Power of Crown to disallow such laws.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, s. 21.
s. 38.	Governor General, members of his Council, and judges of Supreme Court to be justices of the peace.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 39.	Trial of offences in England.	Reproduced by s. 119.
ss. 40, 41.	Procedure for obtaining evidence in India for criminal proceedings in the high court in England.	Left outstanding as belonging to the law of evidence, but apparently repealed or superseded by subsequent changes in that law.
s. 42.	Procedure for obtaining evidence in India for proceedings in Parliament against Indian offenders.	
s. 43.	Proceedings in Parliament against Indian offenders not to be discontinued by prorogation or dissolution of Parliament.	

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
13 Geo. III, c. 63, s. 44.	Procedure for obtaining evidence in India for civil proceedings in the high court in England.	Left outstanding as belonging to the law of evidence.
s. 45.	Depositions in capital cases not allowed as evidence, except in proceedings in Parliament.	
s. 46.	Saving for privileges of East India Company.	Repealed, S. L. R. Act, 1892.
s. 47.	. . . . .	Repealed as to U. K. by S. L. R. Act, 1887.
21 Geo. III, c. 70, s. 1.	**The East India Company Act, 1780.** Governor-General and his Council exempt from jurisdiction of Supreme Court, Calcutta, for official acts.	Reproduced by s. 105 (*a*).
ss. 2–4.	Written order by Governor-General in Council a justification for any act in any court in India.	Reproduced by s. 106.
s. 5.	Procedure in case of oppression, &c., by Governor-General or his Council.	Reproduced by s. 107 (1) and (2).
s. 6.	Copies and depositions admissible in evidence.	Reproduced by s. 107 (3).
s. 7.	Limitation of prosecutions and suits against Governor-General and his Council.	Reproduced so far as in force by s. 119 (3).
s. 8.	Supreme Court not to have jurisdiction in matters concerning the revenue.	Reproduced by s. 101 (3).
ss. 9, 10.	Exemption of certain classes of persons from jurisdiction of Supreme Court.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
21 Geo. III, c. 70, ss. 11–16.	Registration of native servants of East India Company.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 17.	Jurisdiction of Supreme Court, Calcutta. Proviso as to native laws and usages.	Not reproduced. Saved by s. 101 (1). This section is reproduced by s. 108 so far as it appears to represent existing law. The express grant of jurisdiction over all inhabitants of Calcutta is omitted as no longer necessary.
s. 18.	Rights of fathers of Hindu and Mahomedan families, and rules of caste, preserved.	Not reproduced. May be, and has been to some extent, modified or superseded by Indian legislation.
ss. 19, 20.	Power for Supreme Court, Calcutta, to make rules as to process.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
ss. 21, 22.	Judicial powers of Governor-General in Council.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 23.	Power of Governor-General in Council to frame regulations for provincial courts and councils.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 24.	No action for acts done by, or by order of, judicial officers.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
ss. 25, 26.	Notice to judicial officer before prosecuting him.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
ss. 27, 28.	. . . . .	Repealed, S. L. R. Act, 1872.
24 Geo. III, sess. 2, c. 25, ss. 1–63.	**The East India Company Act, 1784.**	Repealed, S. L. R. Act, 1872.
ss. 64, 65.	Procedure by information against British subjects guilty of extortion in East India.	Special procedure not reproduced. As to substance, see s. 119.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 Geo. III, sess. 2, c. 25, ss. 66–77.	Prosecution of Indian offenders in Parliament.	Not reproduced. These sections contain an elaborate procedure for constituting a special court for the trial of Indian offenders. It was to consist of three judges, four peers, and six members of the House of Commons. See Mill, *British India*, iv. 407 seq. The machinery has never been put in force, and the whole of this set of provisions is practically obsolete.
ss. 78–82.	Evidence and limitation of proceedings in information under Act.	Not reproduced. Fall with foregoing provisions.
s. 83.	Saving for claims as to territorial acquisitions.	
ss. 84, 85.	Commencement of Act . . Act to be public Act.	Repealed, S. L. R. Act, 1887.
26 Geo. III, c. 57, ss. 1–28.	**The East India Company Act, 1786.** Prosecution of Indian offenders in Parliament.	Not reproduced. These sections merely amend the machinery under Pitt's Act (24 Geo. III, sess. 2, c. 25).
s. 29.	. . . . .	Repealed by S.L.R. Act, 1892.
s. 30.	Jurisdiction of governor's and mayor's court at Madras.	Jurisdiction continued by s. 101. Repealed by S. L. R. Act, 1892.
s. 31.	. . . . .	Repealed by S.L.R. Act, 1872.
ss. 32–35.	. . . . .	Repealed by 33 Geo. III, c. 52, s. 146.
ss. 36, 37.	. . . . .	Repealed by S. L. R. Act, 1872.
s. 38.	Bonds executed in East Indies to be evidence in Britain, and vice versa.	Repealed as to British India by S. L. R. Act, 1892.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
26 Geo. III, c. 57, s. 39.	. . . . .	Repealed by S. L. R. Act, 1892.
33 Geo. III, c. 52, ss. 1–18.	**The East India Company Act, 1793.**	Repealed as to U. K. by S. L. R. Act, 1887.
s. 19.	Power of commissioners to send orders to India through secret committee of directors.	Amended by 3 & 4 Will. IV, c. 85, s. 36, and 21 & 22 Vict. c. 106, s. 27. See s. 14.
s. 20.	Appointment of secret committee of directors.	Not reproduced. Superseded by 21 & 22 Vict. c. 106, s. 27. See s. 14.
s. 21.	Dispatches of secret committee, by whom to be prepared.	Repealed as to U. K. by S. L. R. Act, 1887.
s. 22.	Secret dispatches from India.	Amended by 21 & 22 Vict. c. 106, s. 28. Reproduced by s. 14 (2). *The enumeration of subjects* in s. 22 is not repeated in s. 14 (2). It differs from that given in 21 & 22 Vict. c. 106, s. 27, as to dispatches to India.
s. 23.	. . . . .	Repealed as to U. K. by S. L. R. Act, 1887.
s. 24.	Government of Bengal by Governor-General in Council.	Not reproduced. Superseded by 3 & 4 Will. IV, c. 85, s. 39. See ss. 36, 49.
	Government of Madras and Bombay by Governor in Council.	Reproduced by s. 50 (1). The provision as to management of the revenues is modified by 21 & 22 Vict. c. 106, s. 41. The provisions as to the military authority of the Madras and Bombay Governments are repealed by 56 & 57 Vict. c. 62.
	Number of members of council at Madras and Bombay.	Modified by 3 & 4 Will. IV, c. 85, s. 57, and 9 Edw. VII, c. 4, s. 2 (1). See s. 51 (2).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33 Geo. III, c. 52, s. 24 (*continued*).	Governors in Council of Madras and Bombay to be subject to control of Governor-General in Council.	Verbally modified by 3 & 4 Will. IV, c. 85, s. 65. Reproduced by s. 49 (1).
s. 25.	Directors to fill vacancies in offices of—	
	Governor-General . .	Not reproduced. Superseded by 21 & 22 Vict. c. 106, s. 29.
	Governors of Madras and Bombay.	
	Members of Council . .	Not reproduced. Superseded by 32 & 33 Vict. c. 97, s. 8.
	Governors of the forts and garrisons at Fort William, Fort St. George, and Bombay.	Not reproduced. Superseded by 16 & 17 Vict. c. 95, s. 30, which has itself been subsequently repealed.
	Commanders-in-chief .	
	Qualification for office of member of council of—	
	Governor-General . .	Not reproduced. Superseded by 24 & 25 Vict. c. 67, s. 3.
	Governor of Madras or Bombay.	Reproduced by s. 51 (3). Provision as to seniority rep. by 24 & 25 Vict. c. 54, s. 7. Provision as to third member virt. rep. by 9 Edw. VII, c. 4, s. 2 (1).
s. 26.	Power for Crown to fill vacancies in default of directors.	Repealed as to U. K. by S. L. R. Act, 1887.
s. 27.	Provisional appointments to offices of—	
	Governor-General, governor, and member of Council.	Not reproduced. Superseded by 3 & 4 Will. IV, c. 85, s. 61, and 24 & 25 Vict. c. 67, ss. 2, 5.
	Governor of the forts and garrisons at Fort William, Fort St. George, and Bombay.	Not reproduced. See note on s. 25.
	Commanders-in-chief .	
s. 28.	. . . . .	Repealed as to U.K. by S. L. R. Act, 1887. Repealed as to British India by Act XII of 1873.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33 Geo. III, c. 52, ss. 29, 30.	Temporary vacancy in office of—	
	Governor-General . .	Not reproduced. Superseded by 3 & 4 Will. IV, c. 85, s. 62.
	Governor	Not reproduced. Superseded by 3 & 4 Will. IV, c. 85, s. 63.
s. 31.	Temporary vacancy in office of member of council.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, s. 27.
s. 32.	Appointment of Commander-in-chief as member of—	
	Governor-General's council.	Repealed by S. L. R. Act, 1892.
	Governor's council. . .	Repealed by 56 & 57 Vict. c. 62.
	Salary of Commander-in-chief as member of council.	Not reproduced. See note on s. 80.
s. 33.	Commander-in-chief in India to be a member of local council while in Madras or Bombay.	Reproduced by s. 51.
s. 34.	Absence or illness of member of council.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, s. 27.
s. 35.	Removal of officers by Crown.	Amended as to communication of order of removal by 21 & 22 Vict. c. 106, s. 38. Reproduced by s. 21.
s. 36.	Removal of officers by directors of East India Company.	Reproduced by s. 21.
	Exception as to officers appointed by Crown on default of directors.	Not reproduced. Made unnecessary by abolition of Company.
s. 37.	If Governor-General, &c., leaves India intending to return to Europe, his office vacated.	Re-enacted in substance by 3 & 4 Will. IV, c. 85, s. 79. Qualified as to members of council by 24 & 25 Vict. c. 67, s. 26. Reproduced by s. 82 (1).
	Evidence of intention to return to Europe.	Not reproduced. 3 & 4 Will. IV, c. 85, s. 79, contains no such provision.
	Resignation of office by Governor-General &c.	Reproduced by s. 82 (2).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33 Geo. III, c. 52, s. 37 (*continued*).	Salary and allowances to cease from date of departure or resignation.	See s. 82 and notes thereon.
	Salary and allowances not payable during absence.	Amended by 3 & 4 Will. IV, c. 85, s. 79. See s. 82 and notes thereon.
s. 38.	Power to postpone matters proposed by members of council.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, ss. 8, 28, giving power to make rules of procedure.
s. 39.	Form and signature of proceedings.	Amended by 53 Geo. III, c. 155, s. 79, and Indian Act II of 1834. Reproduced by ss. 43 (1), 54 (1).
s. 40.	Authority of Governor-General in Council over local Governments.	Re-enacted in more general terms by 3 & 4 Will. IV, c. 85, s. 39. Reproduced by ss. 36 and 49 (1).
s. 41.	Duty of local Governments in case of conflict between orders of Governor-General in Council and orders of directors of East India Company.	Not reproduced. Made unnecessary and unsuitable by change of circumstances. Virt. rep. by 3 & 4 Will. IV, c. 85, s. 65.
s. 42.	Restriction on power of Governor-General in Council to make war or treaty.	Reproduced by s. 48.
s. 43.	Local Governments not to make war or treaty without orders of Governor-General in Council or East India Company.	Reproduced by s. 49 (2).
	Officers of local Governments to obey such orders of Governor-General in Council.	Reproduced by s. 49 (1).
	Governor, &c., disobeying orders of Governor-General in Council liable to be suspended or removed.	Not reproduced. See note on s. 49.
s. 44.	Local Governments to keep Governor-General informed of their proceedings.	Reproduced by s. 49 (1).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33 Geo. III, c. 52, ss. 45, 46.	Proceedings against persons suspected of dangerous correspondence.	Reproduced by s. 120.
ss. 47–49.	Power for Governor-General or Governor of Madras or Bombay to act against opinion of council.	Modified, as to Governor-General, by 33 & 34 Vict. c. 3, s. 5. Reproduced by ss. 44 (2), (3), (4), 53.
s. 50.	Person temporarily acting as Governor-General or governor not to act against opinion of council.	Not reproduced. Superseded by 3 & 4 Will. IV, c. 85, ss. 62, 63, and 24 & 25 Vict. c. 67, s. 50.
s. 51.	Power to act against opinion of council not to be exercised in certain cases.	Not reproduced. Superseded by 33 & 34 Vict. c. 3, s. 5, and by provisions as to Indian legislation.
s. 52.	Powers of local Government superseded by visit of Governor-General.	Not reproduced. Virt. rep. by 3 & 4 Will. IV, c. 85, s. 67.
s. 53.	Appointment and powers of vice-president during absence of Governor-General.	Repealed by 2 & 3 Geo. V, c. 6, s. 4.
s. 54.	Power of Governor-General while absent from his council to issue orders to local Governments and officers.	Reproduced by s. 47 (2).
s. 55.	Suspension of Governor-General's power to issue such orders.	Reproduced by s. 47 (3).
s. 56.	. . . . .	Repealed, 24 & 25 Vict. c. 54, s. 7.
s. 57.	Presidential restriction on civil appointments. Residence required to qualify civil servant for appointment.	Repealed by 2 & 3 Geo. V, c. 6, s. 4.
ss. 58–61.	. . . . .	Repealed as to U. K. by S. L. R. Act, 1887. S. 61 repealed as to British India by Indian Act XIV of 1870.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33 Geo. III, c. 52, s. 62.	Receiving gifts to be a misdemeanour.	Re-enacted by 3 & 4 Will. IV, c. 85, s. 76. Reproduced by s. 117 (5).
s. 63.	Disposal of gifts and fines.	Reproduced by s. 117 (last part).
s. 64.	Exception for fees of barristers, &c.	Reproduced by s. 117 (5).
s. 65.	Disobedience and breach of duty.	Re-enacted by 3 & 4 Will. IV, c. 85, s. 80. Reproduced by s. 117 (2), (3).
s. 66.	Corrupt bargain for giving up or obtaining employment.	Not reproduced. Superseded by 49 Geo. III, c. 126.
s. 67.	Jurisdiction of courts in India and Great Britain over offences by British subjects in Native States.	See s. 119 (2). Repealed as to Indian courts by Indian Act XI of 1872.
s. 68.	East India Company or its servants not to stay actions without approbation of Board.	Not reproduced. Cf. 13 Geo. III, c. 63, s. 35. Repealed as to U. K. by S. L. R. Act, 1887.
s. 69.	East India Company not to release sentence of British or Indian court against its servants.	
s. 70.	Forfeiture of office after absence of five years.	Amended as to military officers by 53 Geo. III, c. 155, s. 84. Not reproduced. Practically superseded by power to make rules as to furlough, &c.
ss. 71–136.	. . . . .	Repealed, S. L. R. Act, 1872.
s. 137.	Governor-General, governor, judges of supreme courts, members of council, and judicial and revenue officers in Bengal not to trade.	Reproduced by s. 117 (4).
	British subjects not to trade in salt, &c.	Not reproduced. Repealed by Indian Act XIV of 1870.
ss. 138, 139.	. . . . .	Repealed, S. L. R. Act, 1872.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33 Geo. III, c. 52, s. 140.	Procedure for offences under Act.	See s. 119.
s. 141.	Procedure, and limitation of time for proceedings.	See notes on s. 119. So much as relates to limitation in England superseded by 56 & 57 Vict. c. 61. The provisions as to procedure are omitted as having been superseded by change of practice.
ss. 142–150.	. . . . .	Repealed, S. L. R. Act, 1872.
s. 151.	**Appointment of justices of** the **peace.**	Not reproduced. Rep. by Indian Act II of 1869.
ss. 152–155.	. . . . .	Repealed as to U. K. by S. L. R. Act, 1887, and as to British India by Indian Acts II of 1869, XIV of 1870, & X of 1875.
s. 156.	Admiralty jurisdiction of Supreme Court, Calcutta.	Not reproduced. Effect saved by s. 101 (1), and by Article 33 of the charter of the Calcutta High Court.
s. 157.	Appointment of coroners . .	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
ss. 158–160.	. . . . .	Repealed as to U. K. by S. L. R. Act, 1887. S. 159 rep. as to British India by Indian Act XIV of 1870.
s. 161.	. . . . .	Repealed, 4 & 5 Will. IV, c. 33.
s. 162.	Proceedings in respect of things done under Act to be taken within three years.	See s. 119 (3). Superseded as to India by Indian legislation, see Act IX of 1871.
s. 163.	. . . . .	Repealed as to U. K. by S. L. R. Act, 1887.
37 Geo. III, c. 142, s. 1.	**The East India Act, 1797.** Number of judges of Supreme Court, Calcutta.	Superseded by 24 & 25 Vict. c. 104, s. 2. Repealed, S. L. R. Act, 1892.
ss. 2, 3.	Pensions of judges . .	Not reproduced. S. 2 is superseded by 24 & 25 Vict. c. 104, s. 6. S. 2 is repealed in part, and s. 3 is repealed, by S. L. R. Act, 1892.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
37 Geo. III. c. 142, s. 4.	Depositions	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
ss. 5–7.	Salaries and fees of officers of Supreme Court, Calcutta.	
s. 8.	Registration, &c., in Supreme Court, of regulations made by Governor-General in Council.	
ss. 9, 10.	Constitution and powers of recorders' courts at Madras and Bombay.	Repealed, S. L. R. Act, 1892.
s. 11.	Jurisdiction of recorders' courts at Madras and Bombay.	Not reproduced. The powers and jurisdiction of the recorders' courts were vested in the supreme courts by 39 & 40 Geo. III, c. 79, s. 5 (Madras), and 4 Geo. IV, c. 71, s. 7 (Bombay).
s. 11. proviso.	Governor, members of his council, and recorder exempt from arrest or imprisonment by recorders' courts.	Reproduced by s. 105. See note on 13 Geo. III. c. 63, s. 17.
	Governor and his council exempt from jurisdiction of recorders' courts for official act.	Reproduced by s. 105 (1) (*a*).
	Recorders' courts not to have jurisdiction in matters concerning the revenue.	Reproduced by s. 101 (3).
	Exemption of certain classes of persons from jurisdiction of recorders' courts.	Not reproduced. The corresponding provisions in 21 Geo. III, c. 70, ss. 9, 10, as to the Supreme Court, Calcutta, have been repealed by Indian Act XIV of 1870 and by S. L. R. Act, 1892.
s. 12.	Rights of fathers of Hindu and Mahomedan families, and rules of caste, preserved.	Not reproduced. Corresponds to 21 Geo. III, c. 70, s. 18.
s. 13.	Jurisdiction of recorders' courts, Madras and Bombay.	Not reproduced, Saved by s. 101.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
37 Geo. III, c. 142, s. 13 (*continued*).	Proviso as to native laws and usages.	Reproduced by s. 108. See note to 21 Geo. III, c. 70, s. 17, supra.
	Power to make rules of procedure for such cases. Appearance and examination of witnesses in such cases.	Not reproduced. Corresponding provisions in 21 Geo. III, c. 70, s. 19, as to the Supreme Court, Calcutta, repealed by Indian Act XIV of 1870 and S. L. R. Act, 1892.
s. 14.	No action for acts done by or by order of judicial officers.	Not reproduced. Superseded by Indian Act XVIII of 1850.
	Procedure for prosecution of judicial officers.	Not reproduced. Corresponding provisions in 21 Geo. III, c. 70, ss. 25, 26, as to the Supreme Court at Calcutta, repealed by Indian Act XIV of 1870 and S. L. R. Act, 1892.
s. 15.	Registration of native servants of East India Company.	**Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.**
s. 16.	Appeal to His Majesty in Council.	
s. 17.	Transfer of records of mayors' courts, &c., to recorders' courts.	
s. 18.	Jurisdiction of mayors' courts, &c., transferred to recorders' courts.	
ss. 19–26.	Provisions as to recorders .	
s. 27.	Forms and rules as to process to be sent to Board for Affairs of India.	Not reproduced. Corresponding provisions as to Calcutta Court repealed by Indian Act XIV of 1870 and S. L. R. Act, 1892.
s. 28.	Loans by British subjects to native princes.	Reproduced by s. 118.
s. 29.	Report by law officers . .	Not reproduced. Does not require specific enactment.
s. 30.	Jurisdiction of courts of request.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
39 & 40 Geo. III,	**The Government of India Act, 1800.**	
c. 79, s. 1.	Power of directors of East India Company to apportion territories, revenues, and civil servants between Governments of Madras, Bombay, and Bengal.	Not reproduced. As to territories, superseded by 24 & 25 Vict. c. 67, s. 47, and 28 & 29 Vict. c. 17, ss. 4, 5. See s. 57.
s. 2.	Constitution, powers, and jurisdiction of Supreme Court, Madras.	Not reproduced. See note to 13 Geo. III, c. 63, ss. 13, 14, supra.
s. 3.	Exemption of Governor of Madras and Governor-General and their councils from jurisdiction of Supreme Court.	Reproduced by s. 105.
s. 4.	Transfer of records to Supreme Court.	Repealed by Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 5.	Transfer of jurisdiction of Supreme Court.	See note to 13 Geo. III, c. 63, ss. 13, 14, supra. Repealed in part, S. L. R. Act, 1892.
s. 6.	Salaries of Madras judges .	Repealed, S. L. R. Act, 1892.
s. 7.	Salaries of Madras judges to be in place of perquisites.	Not expressly reproduced. Covered by s. 99.
s. 8.	Allowances to Madras judges	Repealed in part, S. L. R. Act, 1892. Superseded by 24 & 25 Vict. c. 104, s. 6.
s. 9.	Salaries of judges of supreme courts at Calcutta and Madras, and Recorder of Bombay, to cease on judge leaving India.	Not reproduced. Salaries and allowances of high court judges are now fixed by the Secretary of State under 24 & 25 Vict. c. 104, s. 6.
s. 10.	Vacancy in office of Recorder of Bombay.	Repealed by Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 11.	Power of Governor of Madras in Council to make regulations.	Repealed by Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 12.	Absence of Governor-General or Governor from his council.	Reproduced as to governors by s. 53. Repealed as to Governor-General, S. L. R. Act, 1892.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
39 & 40 Geo. III, c. 79, s. 12 (*continued*).	Saving of Governor-General's power to appoint a vice-president.	Not reproduced. This power was conferred by 33 Geo. III, c. 52, s. 53, which was repealed by 2 & 3 Geo. V, c. 6, s. 4.
ss. 13–16.	. . . . .	Repealed, 9 Geo. IV, c. 74, s. 126, which section is itself repealed by S. L. R. Act, 1873.
s. 17.	Courts of request . . .	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
ss. 18, 19.	Corporal punishment . .	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 20.	Local *extent of jurisdiction* of Supreme Court, Calcutta.	Saved by s. 101 (1). Repealed in part, S. L. R. Act, 1892.
ss. 21, 22.	Grant of letters of administration.	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
ss. 23, 24.	Insolvent debtors . . .	Repealed, Indian Act XIV of 1870, S. L. R. Act, 1892.
s. 25.	Power to appoint judges of supreme courts at Calcutta, Madras, and Bombay, commissioners of prize.	Repealed by Prize Courts Act, 1894 (56 & 57 Vict. c. 39).
53 Geo. III, c. 155,	**The East India Company Act, 1813.**	
ss. 1–32.	. . . . .	Repealed, S. L. R. Act, 1873.
ss. 33–39.	. . . . .	Repealed, S. L. R. Act, 1874.
ss. 40, 41.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 42.	Control of India Board over colleges and seminaries in India.	Omitted as having been made unnecessary by alteration of circumstances.
s. 43.	Provision to be made for public education.	
ss. 44–48.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 49.	Salaries of bishops and archdeacons.	Not reproduced. These salaries may now be fixed and altered by the Secretary of State under 43 Vict. c. 3, s. 3. See notes on s. 113.
s. 50.	Such salaries when to commence and cease. Such salaries to be in lieu of fees, &c.	

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
53 Geo. III, c. 155, ss. 51, 52.	Jurisdiction of Bishop of Calcutta.	Reproduced by s. 110. Ss. 51 and 52 extended to bishops of Madras and Bombay, and s. 52 verbally amended by 3 & 4 Will. IV, c. 85, ss. 92, 93.
s. 53.	Countersignature of ecclesiastical letters patent for Calcutta, Madras, or Bombay.	Not reproduced. Superseded by 47 & 48 Vict. c. 30 (Great Seal Act, 1884).
ss. 54–78.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 79.	Signature of proceedings by the chief secretary or the principal secretary of the department.	Amended by Indian Act II of 1834. Reproduced by ss. 43 (1), 54 (1).
ss. 80, 81.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 82.	Residence required to qualify civil servants for appointments exceeding in value £1,500 per annum.	Not reproduced. Virtually repealed by 24 & 25 Vict. c. 54, s. 7.
s. 83.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 84	Absence of military officers for five years.	Not reproduced. See note on 33 Geo. III, c. 52, s. 70.
s. 85.	Precedence of civil servants returning after five years' absence.	Omitted as having been superseded by rules of service.
s. 86.	Precedence of civil servants .	Omitted on the same ground. S. 56 of 33 Geo. III, c. 52, which this section amends, has been repealed by 24 & 25 Vict. c. 54, s. 7.
. 87, 88.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 89.	Salaries of governor-general, governors of Madras and Bombay, members of council, and judges of high courts, to commence on their taking upon themselves the execution of their office.	Reproduced by s. 80 (3).
	Allowances for equipment and voyage.	Repealed by 43 Vict. c. 43, s. 5.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
53 Geo. III, c. 155, ss. 90–92.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 93.	Superannuation allowances of East India Company's servants in England.	Spent.
s. 94.	Account of such allowances to be laid before Parliament.	
s. 95.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 96.	Power of Governor-General in Council, and the Governors of Madras and Bombay in Council, to make articles of war for native officers and soldiers.	Not reproduced. As to Governor-General in Council superseded by 3 & 4 Will. IV, c. 85, s. 73, and not saved by 24 & 25 Vict. c. 67, s. 22; as to Madras and Bombay superseded by 24 & 25 Vict. c. 67, ss. 42, 43.
ss. 97–110.	. . . . .	Repealed, S. L. R. Act, 1890.
s. 111.	Power of advocates-general at Calcutta, Madras, Bombay, and Prince of Wales Island, to file informations for debts due to Crown.	Reproduced by s. 109.
ss. 112–122.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 123.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 124.	. . . . .	Repealed, S. L. R. Act, 1890.
s. 125.	. . . . .	Repealed, S. L. R. Act, 1873.
55 Geo. III, c. 84, s. 1.	**The Indian Presidency Towns Act, 1815.** Power to extend limits of presidency towns.	Reproduced by s. 59. Residue of Act repealed, S.L.R. Act, 1873.
4 Geo. IV, c. 71.	**The Indian Bishops and Courts Act, 1823.**	
ss. 1, 2.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 3.	Pensions to bishops and archdeacons.	Not reproduced. See note (*b*) on s. 113. Repealed as to archdeacons by 43 Vict. c. 3, s. 5.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
4 Geo. IV, c. 71, s. 4.	Residence as chaplain to count for pension as archdeacon.	Not reproduced. Unnecessary, in view of the Secretary of State's power under 43 Vict. c. 3, s. 3, to fix allowances.
s. 5.	House to be provided for Bishop of Calcutta. Expenses of visitations of Bishop of Calcutta.	Reproduced by *s. 113*. Extended to Bishops of Madras and Bombay by 3 & 4 Will. IV, c. 85, s. 100.
s. 6.	Power of Bishop of Calcutta to admit to holy orders.	Reproduced by s. 111.
s. 7.	Constitution, powers, and jurisdiction of Supreme Court, Bombay. Exemption of Governor of Bombay and his council, and Governor-General from jurisdiction of the court.	Not reproduced. See note to 13 Geo. III, c. 63, ss. 13, 14, supra. Reproduced by s. 105.
ss. 8–10.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 11.	Salaries of judges when to commence. Such salaries to be in lieu of fees, &c.	Not reproduced. Superseded or made unnecessary by 24 & 25 Vict. c. 104, s. 6
ss. 12, 13.	. . . . .	Repealed, S. L. R. Act, 1890.
ss. 14–16.	. . . . .	Repealed, S. L. R. Act, 1873.
s. 17.	Powers of Supreme Courts, Madras and Bombay.	Not reproduced. See note to 13 Geo. III, c. 63, ss. 13, 14, supra.
s. 18.	. . . . .	Repealed, S. L. R. Act, 1873.
6 Geo. IV, c. 85,	**The Indian Salaries and Pensions Act, 1825.**	
ss. 1–3.	. . . . .	Repealed, S. L. R. Act, 1890.
s. 4	Salaries of judges of Supreme Courts, Madras and Bombay.	Not reproduced. Superseded by 24 & 25 Vict. c. 104, s. 6.
s. 5	Payments where *judge of* Supreme Court, Recorder of Prince of Wales Island, or Bishop of Calcutta, dies on voyage to India, &c.	Reproduced in part by s. 113. Repealed, as to Recorder of Prince of Wales Island, by S. L. R. Act, 1878. Made unnecessary in part by 24 & 25 Vict. c. 104, s. 6, and 43 Vict. c. 3, s. 3.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
6 Geo. IV, c. 85,		
ss. 6–14	. . . . .	Repealed, S. L. R. Act, 1890.
s. 15.	Pension of Bishop of Calcutta.	Not reproduced. *See note (b)* on s. 113.
ss. 16–21.	. . . .	Repealed, S. L. R. Act, 1890.
7 Geo. IV, c. 56,	**The East India Officers' Act, 1826.**	
s. 3.	Payments to representatives of deceased officers.	Reproduced by s. 82 (4). Ss. 1 and 2 and residue of Act repealed, S. L. R. Act, 1873.
3 & 4 Will. IV, c. 85,	**The Government of India Act, 1833.**	
ss. 1, 2.	Continuance of powers, &c., of East India Company till April 30, 1854.	Not reproduced. Spent.
	Property of Company to be held in trust for Crown.	Not reproduced. *Superseded* by 21 & 22 Vict. c. 106, ss. 1, 2.
ss. 3–18.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 19.	. . . . .	Repealed, S. L. R. Act, 1890.
ss. 20–24.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 25.	Control of Commissioners over acts of East India Company.	Reproduced by s. 2 (2).
ss. 26–35.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 36.	Communication of secret orders to India.	Reproduced by s. 14 (1). Amended by 21 & 22 Vict. c. 106, s. 27.
s. 37.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 38.	Presidency of Fort William to be divided into two presidencies (Bengal and Agra).	Not reproduced. *This provision* was suspended by 5 & 6 Will. IV, c. 52, s. 1, and 16 & 17 Vict. c. 95, s. 13, and remained in suspension until used in 1912 for the establishment of a Governor in Council for Bengal. It had previously been treated as *practically superseded by* the appointment of a lieutenant-governor for the North-Western Provinces under 5 & 6 Will. IV, c. 52, s. 2.
	Power to declare limits of presidencies.	Not reproduced. Virt. rep. by 28 & 29 Vict. c. 17, ss. 4, 5.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
3 & 4 Will. IV, c. 85, s. 39.	*Government of India* by Governor-General in Council.	Reproduced by s. 36. The provision as to control of the revenues of India is amended by 21 & 22 Vict. c. 106, s. 41.
s. 40.	. . . . .	Repealed, 24 & 25 Vict. c. 67, s. 2.
ss. 41, 42.	. . . . .	Repealed, S. L. R. Act, 1874.
ss. 43, 44.	. . . . .	Repealed, 24 & 25 Vict. c. 67, s. 2.
s. 45.	Laws made by Governor-General in Council—	
	to have same force in India as Acts of Parliament.	Not reproduced. There is no such provision in 24 & 25 Vict. c. 67.
	to be judicially noticed by Indian courts.	Not reproduced. Superseded as to laws in force in British India by Indian Act I of 1872, s. 57.
	need not be registered .	Not reproduced. Spent.
s. 46.	Restrictions on legislation affecting high courts.	Reproduced by s. 63 (3). This restriction is kept in force by 24 & 25 Vict. c. 67, s. 22.
s. 47.	Rules for procedure of Governor-General in Council.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, ss. 8, 18.
s. 48.	Quorum of Governor-General's legislative council.	Repealed by S. L. R. Act, 1890.
	Quorum of Governor-General's executive council.	Reproduced by s. 42 (2).
	Equality of votes in—	
	Governor-General's executive council.	Reproduced by s. 44 (1).
	Governor-General's legislative council.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, s. 15.
s. 49.	. . . . .	Repealed, 33 & 34 Vict. c. 3, s. 4.
s. 50.	. . . . .	Repealed, 24 & 25 Vict. c. 67, s. 2.
s. 51.	Saving of power of Parliament—	
	to legislate for India .	Reproduced by ss. 63, 121.
	to control Governor-General in Council.	

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
3 & 4 Will. IV, c. 85, s. 51 (*continued*).	Laws made by Governor-General in Council to be laid before Parliament.	Not reproduced. This provision does not appear to apply to laws made under 24 & 25 Vict. c. 67. Spent.
s. 52.	Enactments relating to Governor-General of Bengal to apply to Governor-General of India.	Reproduced not in express terms, but by language of Digest.
ss. 53–55.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 56.	Government of Bengal by Governor in Council.	Not reproduced. The power to appoint a Governor in Council for Bengal was exercised in 1912.
	Government of Madras and Bombay by Governors in Council.	Reproduced by s. 50 (1).
	Number of members of council at Madras and Bombay.	Virtually repealed by 9 Edw. VII, c. 4, s. 2. Not reproduced.
	Government of Agra . .	Not reproduced. There is no Presidency of Agra. See note to 3 & 4 Will. IV, c. 85, s. 38, *supra*.
	Governor-General to be Governor of Bengal.	Repealed, S. L. R. Act, 1890.
s. 57.	Power to revoke or suspend appointment of councils.	Reproduced by s. 50 (3).
	Power to reduce number of members of council.	Virtually repealed by 9 Edw. VII, c. 4, s. 2. See s. 51 (2).
s. 58.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 59.	Powers of Governor where there is no council.	Reproduced by s. 50.
	Powers of Governor in Council.	Not reproduced. A Governor in Council for Bengal was appointed in 1912.
	Rights, &c., of Governors and members of their councils.	
	Legislation by Governors in Council.	Not reproduced. Superseded by 24 & 25 Vict. c. 67, s. 42.
	Sanction required to creation of office or grant of salary.	Not reproduced. See s. 49.
s. 60.	. . . . .	Repealed, S. L. R. Act, 1874.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
3 & 4 Will. IV, c. 85, s. 61.	Power of directors to make provisional appointments to any office, subject, in certain cases, to approval of Crown.	Repealed, as to members of Governor-General's council, by 24 & 25 Vict. c. 67, s. 2. Reproduced, so far as in force, by s. 83.
s. 62.	Member of council to fill vacancy in office of Governor-General.	Reproduced by s. 85 (4), (5). S. 62 is superseded by 24 & 25 Vict. c. 67, s. 50, which provides for the Governor of Madras or Bombay acting as Governor-General, but the section is still in force with respect to the interval before the arrival of the governor (see 24 & 25 Vict. c. 67, s. 51). S. 62 is modified by 9 Edw. VII, c. 4, s. 4, and repealed in part by 2 & 3 Geo. V, c. 6, s. 4.
s. 63.	Vacancy in office of Governor to be supplied by member of council, or (if no council) by secretary.	Reproduced by s. 86 (1), (2). Repealed, as to Commander-in-Chief, by 56 & 57 Vict. c. 62. Modified by 9 Edw. VII, c. 4, s. 4.
s. 64.	. . . . .	Repealed, S. L. R. Act, 1890.
s. 65.	Authority of Governor-General in Council over certain local Governments.	Reproduced by s. 49 (1).
s. 66.	. . . . .	Repealed, 24 & 25 Vict. c. 67, s. 2.
s. 67.	Powers of Governors of Madras, Bombay, [and Agra] not suspended by visit of Governor-General.	Reproduced by s. 49 (4).
s. 68.	Governors in Council to keep Governor-General in Council informed of their proceedings.	Reproduced by s. 49 (1).
s. 69.	. . . . .	Repealed, S. L. R. Act, 1890.
s. 70.	. . . . .	Repealed, 24 & 25 Vict. c. 67, s. 2.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
3 & 4 Will. IV, c. 85,		
s. 71.	New Presidency of Agra not to affect promotion of officers.	Repealed by 2 & 3 Geo. V, c. 6, s. 4.
s. 72.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 73.	Power to make articles of war.	Reproduced by s. 63 (1) (c).
	Judicial notice to be taken of such articles.	Not reproduced. Superseded, as to British India, by Indian Act I of 1872, s. 57.
	Saving of prior laws until articles made.	Expired. Articles of war made by Indian Acts V of 1869 and VIII of 1911.
s. 74.	Removal of officers by Crown.	Repealed as to counter-signature and communication by S. L. R. Act, 1890. Reproduced by s. 21 (1).
s. 75.	Removal of officers by directors of East India Company.	Reproduced by s. 21 (3).
	Proviso as to officers appointed by Crown on default of directors.	Repealed, S. L. R. Act, 1890.
s. 76.	Salaries of Governor-General, governor, and members of their councils.	Virtually repealed as to salaries of members of the Governor-General's council by 24 & 25 Vict. c. 67, s. 4. The salaries of the Governors of Madras and Bombay, and of members of council, have since been fixed by the Secretary of State.
	Governor-General, governors, and members of council not to accept gifts; or to carry on trade.	Reproduced by s. 117 (4), (5).
	Expenses of equipment and voyage, &c.	Repealed by 43 Vict. c. 3, s. 5.
s. 77.	Salary of governor-general, governors, and members of their councils to be reduced by amount of any pension, &c., received by them.	Reproduced by s. 80.
s. 78.	Power to make regulations as to patronage.	Amended by 21 & 22 Vict. c. 106, s. 30. Reproduced by s. 90.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
3 & 4 Will. IV, c. 85, s. 79.	If governor-general, &c., returns to Europe his office vacated. Resignation of office by governor-general, &c. Salary and allowances to cease from date of departure or resignation. Salary and allowances not payable during absence.	Reproduced by s. 82. See note on 33 Geo. III, c. 52, s. 37.
	Payment of salaries and allowances to representatives.	Reproduced by s. 82 (4).
s. 80.	Disobedience and breach of duty.	Reproduced by s. 117 (2), (3).
ss. 81–83.	. . . . .	Repealed, S. L. R. Act, 1890.
s. 84.	Laws to be made against illicit entry or residence.	Not reproduced. This direction has been observed. See Indian Act III of 1864.
s. 85.	. . . . .	Repealed, S. L. R. Act, 1890.
s. 86.	Power to hold land . .	Superseded by Indian Act IV of 1837.
s. 87.	No disabilities in respect of religion, colour, or place of birth.	Reproduced by s. 91.
s. 88.	Laws to be made for mitigating and abolishing slavery.	Not reproduced. This direction has been observed by the passing of Indian Act V of 1843. Repealed, as to U. K., S. L. R. Act, 1888.
s. 89.	Salaries of Bishops of Madras and Bombay.	Superseded by 43 Vict. c. 3, s. 3.
s. 90.	Salaries of Bishops of Madras and Bombay to be in lieu of fees.	Reproduced by s. 113.
s. 91.	Expenses of equipment and voyage.	Not reproduced. Repealed by 43 Vict. c. 3, s. 5.
s. 92.	Jurisdiction of Bishops of Madras and Bombay.	Reproduced by s. 110.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
3 & 4 Will. IV, c. 85, s. 93.	Power to fix and vary limits of dioceses of Calcutta, Madras, and Bombay.	Reproduced by s. 110.
	Jurisdiction of bishops of Calcutta, Madras, and Bombay.	Reproduced by s. 110.
s. 94.	Bishop of Calcutta to be metropolitan. His jurisdiction . . . Superintendence of archbishop. Subordination of bishops of Madras and Bombay.	Reproduced by s. 110.
s. 95.	. . . . .	Repealed, S. L. R. Act, 1890.
s. 96.	Pensions of bishops . .	Not reproduced. See note (*b*) on s. 113.
s. 97.	Payments where Bishop of Madras or Bombay dies on voyage to India, &c.	Not expressly reproduced. See note (*b*) on s. 113.
s. 98.	Pensions of bishops . .	Not reproduced. Superseded by 43 Vict. c. 3, s. 3.
s. 99.	Consecration of person resident in India appointed to bishopric of Calcutta, Madras, or Bombay.	Reproduced by s. 112.
s. 100.	Visitations of bishops of Calcutta, Madras, and Bombay.	Reproduced by s. 113.
s. 101.	Limitation to salary of archdeacon. Limitation to expense to be incurred in respect of bishops and archdeacons.	Superseded by 43 Vict. c. 3, s. 3.
s. 102.	Chaplains of Church of Scotland.	Reproduced by s. 115.
	Grants to other sects . .	Reproduced by s. 116.
ss. 103–107.	. . . . .	Repealed, 16 & 17 Vict. c. 95, s. 36.
ss. 108–111.	. . . . .	Repealed, S. L. R. Act, 1874.
s. 112.	Government of St. Helena .	Not reproduced. Left outstanding.
ss. 113–117.	. . . . .	Repealed, S. L. R. Act, 1874.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
5 & 6 Will. IV, c. 52,	**The India (North-West Provinces) Act, 1835.**	
s. 1.	. . . . .	Repealed, S. L. R. Act, 1890.
s. 2.	Power to appoint a lieutenant-governor for the North-Western Provinces.	Not reproduced. Spent.
	Qualification for that office .	Reproduced by s. 55 (3).
	Power to declare extent of that lieutenant-governor's—	
	(1) territories . . .	Repealed, S. L. R. Act, 1890.
	(2) authority . . .	
7 Will. IV, & 1 Vict. c. 47,	**The India Officers' Salaries Act, 1837.**	
ss. 1, 2, 3.	Leave of absence . . .	See s. 82. Superseded in part by 16 & 17 Vict. c. 95, s. 52.
5 & 6 Vict. c. 119,	**The Indian Bishops Act, 1842.**	
s. 1.	Furlough of bishops . .	Not reproduced. Superseded by 34 & 35 Vict. c. 62.
	Furlough allowances of bishops	Not reproduced. Superseded by 43 Vict. c. 3, s. 3.
s. 2.	Second furlough of bishops .	Not reproduced. Superseded by 34 & 35 Vict. c. 62.
s. 3.	Furlough allowance to but one bishop at a time.	Not reproduced. Superseded by 34 & 35 Vict. c. 62, and 43 Vict. c. 3, s. 3.
s. 4.	Allowance to acting Bishop of Calcutta.	Not reproduced. Superseded by 43 Vict. c. 3, s. 3.
16 & 17 Vict. c. 95,	**The Government of India Act, 1853.**	
s. 1.	Continuance of powers of East India Company.	Repealed, S. L. R. Act, 1912.
ss. 2–14.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 15.	Suspension of 3 & 4 Will. IV, c. 85, s. 38, as to division of Bengal into two presidencies.	Not reproduced. See note to 3 & 4 Will. IV, c. 85, s. 38 supra.
	Continuance of 5 & 6 Will. IV, c. 52, s. 2, as to appointment of a lieutenant-governor of the North-Western Provinces.	Not reproduced. See note to 5 & 6 Will. IV, c. 52, s. 2 supra.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
16 & 17 Vict. c. 95, s. 16.	Power to declare that the Governor-General shall not be Governor of Bengal.	Spent. See declaration made by notification of March 22, 1912.
	Power to appoint a governor of Bengal.	Covered by s. 50.
	Cesser of power to appoint a deputy-governor of Bengal.	Repealed, S. L. R. Act, 1892.
	Power to appoint a lieutenant-governor of Bengal.	Not reproduced. Spent. Governor substituted for lieutenant-governor in 1912.
	Service qualification for office of lieutenant-governor.	Reproduced by s. 55 (3).
	Power to declare and limit authority of Lieutenant-Governor of Bengal.	Repealed by S. L. R. Act, 1892.
s. 17.	Power to constitute one new presidency.	Not reproduced. The power of appointing a lieutenant-governor was exercised and exhausted by the appointment of a lieutenant-governor of the Punjab in 1854.
	Power to authorize the appointment of a lieutenant-governor, and to declare the extent of his authority.	
s. 18.	. . . . .	Repealed, 28 & 29 Vict. c. 17, s. 3.
s. 19.	Enactments as to existing presidencies to extend to new presidencies.	Not reproduced.
ss. 20, 21.	. . . . .	Repealed, S. L. R. Act, 1878.
ss. 22–24.	. . . . .	Repealed, 24 & 25 Vict. c. 67, s. 2.
s. 25.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 26.	. . . . .	Repealed, 24 & 25 Vict. c. 67, s. 2.
s. 27.	Fines, forfeitures, and escheats to form part of the revenues of India.	Reproduced by s. 22 (3) (*c*), (*d*).
	Disposal of escheats, &c.	Reproduced by s. 34.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
16 & 17 Vict. c. 95, s. 28.	Power to appoint commissioners to report on reforms proposed by the Indian Law Commissioners.	Repealed, S. L. R. Act, 1892.
ss. 29–31.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 32.	Regulations as to leave and furlough.	Reproduced by s. 89.
ss. 33, 34.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 35.	Salaries of commander-in-chief in India and lieutenant-governors.	*Reproduced by s. 80.*
ss. 36–43.	. . . . .	Repealed, S. L. R. Act, 1878.
17 & 18 Vict. c. 77,	The Government of India Act, 1854.	
s. 1.	Authority for passing letters patent under the Great Seal Counter-signature of warrants under the Royal Sign Manual	Repealed as to U. K., S. L. R. Act, 1892.
s. 2.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 3.	Power to take territory under immediate authority and management of the Governor-General in Council.	Reproduced by s. 56.
	Saving as to laws . . .	Reproduced by s. 58. Affected by 2 & 3 Geo. V, c. 6, s. 3.
s. 4.	Power to declare authority of Governor, &c., of Bengal and the North-Western Provinces.	Reproduced by *s. 56.*
s. 5.	Powers as to Bengal not transferred to Lieutenant-Governor of Bengal or North-Western Provinces to vest in Governor-General in Council. Governor-General of India to be no longer Governor of Bengal.	Not reproduced. See 2 & 3 Geo. V, c. 6, s. 1, as to present Bengal.
s. 6.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 7.	Definition of 'India' . .	See definitions in s. 124.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
17 & 18 Vict. c. 77, s. 8.	Act to be construed with 16 & 17 Vict. c. 95.	Not reproduced.
21 & 22 Vict. c. 106,	The Government of India Act, 1858.	
s. 1.	Transfer of government of India to the Crown.	Not reproduced. Spent; see s. 1.
	Definition of 'India' . .	See definitions in s. 124.
s. 2.	Government of India by the Crown.	Reproduced by s. 1.
	Revenues of India . . .	Reproduced by s. 22 (1), (2).
s. 3.	Secretary of State to exercise powers of East India Company.	Reproduced by s. 2.
	Counter-signatures of warrants.	
s. 4.	Number of Secretaries and Under-Secretaries of State who may sit in House of Commons.	Amended by 27 & 28 Vict. c. 34. Left outstanding.
s. 5.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 6.	Salary of Secretary of State and Under-Secretaries.	Reproduced by s. 2 (4).
s. 7.	Number of members of Council of India.	Amended by 7 Edw. VII, c. 35, s. 1. Reproduced by s. 3 (1).
s. 8.	First members of council .	Repealed, S. L. R. Act, 1878.
s. 9.	Vacancies in council . .	Repealed, S. L. R. Act, 1892.
s. 10.	Not less than nine members of the council to have resided in British India.	Reproduced by s. 3 (3). Amended by 7 Edw. VII, c. 35, s. 2.
s. 11.	Members of council to hold office during good behaviour.	Not reproduced. Superseded by 32 & 33 Vict. c. 97, s. 2, as amended by 7 Edw. VII, c. 35, s. 4.
	Removal of member on address of Parliament.	Reproduced by s. 3 (8).
s. 12.	Seat in council disqualification for Parliament.	Reproduced by s. 4.
s. 13.	Salary of members of council.	Reproduced by s. 3 (9). Amended by 7 Edw. VII, c. 35, s. 3.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
21 & 22 Vict. c. 106. s. 14.	. . . . .	Repealed, 32 & 33 Vict. c. 97, s. 5, which section is repealed by S. L. R. Act, 1883.
ss. 15, 16.	Establishment of Secretary of State.	Reproduced by s. 18.
s. 17.	Compensation to officers .	Repealed, S. L. R. Act, 1878.
s. 18.	Superannuation allowance to officers transferred from home establishment of East India Company to Secretary of State's establishment.	Not reproduced. Spent.
	Superannuation allowance to officers appointed on Secretary of State's establishment.	Reproduced by s. 19. Amended by 1 & 2 Geo. V, c. 25, s. 1.
s. 19.	Duties of Council of India .	Reproduced by s. 6.
	Signature and address of orders, &c.	Reproduced by s. 15.
s. 20.	Committees of council, &c. .	Reproduced by s. 11.
s. 21.	President and Vice-president of council.	Reproduced by s. 8 (1), (2).
s. 22.	Quorum of Council . .	Reproduced by s. 7 (1).
	Who to preside at meetings .	Reproduced by s. 8 (3).
	Council may act notwithstanding vacancy.	Reproduced by s 7 (2).
	Meetings, when to be held .	Reproduced by s. 9.
s. 23.	Procedure at meetings . .	Reproduced by s. 10.
ss. 24, 25.	Submission of orders to council and record of opinions.	Reproduced by s. 12.
s. 26.	Provision for cases of urgency.	Reproduced by s. 13.
s. 27.	Communication of secret orders to India.	Reproduced by s. 14 (1).
s. 28.	Secret dispatches to England.	Reproduced by s. 14 (2).
s. 29.	Appointment by Crown of—	
	Governor-general . .	Reproduced by s. 37.
	Fourth ordinary member of governor-general's council.	Repealed, S. L. R. Act, 1878
	Governors of presidencies.	Reproduced by s. 50 (2).
	Advocates general . .	Reproduced by s. 109.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
21 & 22 Vict. c. 106, s. 29 (*continued*).	Appointment of members of councils of governor-general and governors.	Repealed, S. L. R. Act, 1878.
	Appointment of lieutenant-governors.	Reproduced by s. 55 (2).
s. 30.	Regulations as to the making of appointments in India.	Reproduced by s. 90.
	Power to restore officers suspended or removed.	Not reproduced.
s. 31.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 32.	Regulations for admission to covenanted civil service.	Reproduced by s. 92.
s. 33.	Cadetships and other appointments.	Reproduced in substance by s. 20 (1).
s. 34.	Regulations for admission to cadetships.	Spent.
s. 35.	Selection for cadetships .	Reproduced in substance by s. 20 (1).
s. 36.	Mode of making nominations for cadetships.	Not reproduced. Virtually repealed by abolition of Indian Army.
s. 37.	Regulations as to appointments and admission to service.	Reproduced by s. 20 (2).
s. 38.	Removal of officers by Crown to be communicated to Secretary of State in Council.	Reproduced by s. 21 (2).
s. 39.	Property, &c., of East India Company—	
	To vest in Crown . .	Not reproduced. Spent.
	To be applied for purposes of government of India.	Reproduced by s. 22 (1).
s. 40.	Power of Secretary of State—	
	(1) To sell, mortgage, and buy property.	Reproduced by s. 31.
	(2) To make contracts .	Reproduced by s. 32 (1).
s. 41.	Control of Secretary of State over revenues of India.	Reproduced by s. 23.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
21 & 22 Vict. c. 106, s. 42.	Application of revenues. Money vested in Crown or accruing from property to be applied in aid of revenues.	Reproduced by s. 22 (4).
s. 43.	Account of Secretary of State in Council with Bank.	Amended by 22 & 23 Vict. c. 41, s. 3, and 26 & 27 Vict. c. 73, s. 16. Reproduced by s. 25.
s. 44.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 45.	Stock accounts to be opened at Bank.	Not reproduced. Spent.
	Every such account to be a public account.	Reproduced by s. 25 (6).
s. 46.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 47.	Powers of Secretary of State as to sale and purchase of stock.	Reproduced by s. 22.
s. 48.	Disposal of other securities .	Reproduced by s. 27.
s. 49.	Exercise of borrowing powers.	Reproduced by s. 28.
s. 50.	Forgery of bonds . . .	Repealed, S. L. R. Act, 1892.
s. 51.	System of issuing warrants for payment.	Not reproduced. Superseded by Order in Council of August 27, 1860.
s. 52.	Audit of Indian accounts .	Reproduced by s. 30.
s. 53.	Accounts to be annually laid before Parliament.	Reproduced by s. 29.
s. 54.	Communication to Parliament of orders for commencing hostilities.	Reproduced by s. 16.
s. 55.	Expenses of military operations beyond the frontier.	Reproduced by s. 24.
s. 56.	Military and naval forces of East India Company transferred to the Crown.	Not reproduced.
s. 57.	Indian forces of Crown . .	Not reproduced. Superseded by 23 & 24 Vict. c. 100.
s. 58.	Servants of East India Company transferred to the Crown.	Not reproduced.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
21 & 22 Vict. c. 106, s. 59.	Orders of East India Company.	Reproduced by s. 123.
s. 60.	Cesser of functions of proprietors and directors of East India Company.	Repealed, S. L. R. Act, 1892.
s. 61.	Board of Control abolished .	
s. 62.	Records, &c., of East India Company to be delivered to Secretary of State in Council.	
s. 63.	Exercise of powers of governor-general before taking seat in council.	Reproduced by s. 84.
s. 64.	Existing provisions to be applicable to Secretary of State in Council, &c.	Not expressly reproduced. See general saving in s. 121.
s. 65.	Rights and liabilities of the Secretary of State in Council.	Reproduced by s. 35.
s. 66.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 67.	Treaties, liabilities, and contracts of East India Company.	Reproduced by s. 122.
s. 68.	Secretary of State and Council of India not personally liable.	Reproduced by s. 35 (4).
ss. 69, 70.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 71.	East India Company not to be liable in respect of claims arising out of covenants made before Act.	Not reproduced. East India Company dissolved.
ss. 72, 73.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 74.	Commencement of Act . .	Repealed, S. L. R. Act, 1892.
s. 75.	. . . . .	Repealed, S. L. R. Act, 1878.
22 & 23 Vict. c. 41,	**The Government of India Act, 1859.**	
s. 1.	Power to sell, mortgage, and buy property and make contracts in India.	Reproduced by s. 33 (1), (2), (4).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
22 & 23 Vict. c. 41, s. 2.	Form of execution of assurances in India.	Amended by 33 & 34 Vict. c. 59, s. 2. Reproduced by s. 33 (2).
	Enforcement by or against Secretary of State.	Reproduced by s. 33 (2).
	Secretary of State, &c., not personally liable.	Reproduced by s. 33 (3).
s. 3.	Mode of signing drafts on Bank of England.	Reproduced by s. 25 (3).
s. 4.	Validity of contracts made before passing of Act.	Not reproduced. Spent.
s. 5.	Ditto	Not reproduced. Spent.
	Execution of contracts made by Secretary of State.	Amended by 3 Edw. VII, c. 11, s. 2. Reproduced by s. 32.
s. 6.	Actions by or against Secretary of State.	Covered by s. 35 (1).
24 & 25 Vict. c. 54,	**The Indian Civil Service Act, 1861.**	
s. 1.	Validation of appointments .	Repealed, S. L. R. Act, 1892.
s. 2.	Offices reserved to covenanted civil service.	Reproduced by s. 93.
ss. 3, 4.	Power to make provisional appointments in certain cases.	Reproduced by s. 95.
s. 5.	Offices not reserved to covenanted civil service.	Covered by s. 93.
s. 6.	Saving as to lieutenant-governor.	Schedule II does not include lieutenant-governor.
s. 7.	Repeal of 33 Geo. III, c. 52, s. 56, &c.	Not reproduced. Spent.
Sch.	List of offices reserved to covenanted civil service.	Reproduced by Schedule II.
24 & 25 Vict. c. 67,	**The Indian Councils Act, 1861.**	
s. 1.	Short title	Not reproduced. Spent.
s. 2.	Repeal of enactments .	Not reproduced. Spent.
s. 3.	Number of members of governor-general's council.	Amended by 37 & 38 Vict. c. 91, s. 1. Reproduced by s. 39 (2).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, s. 3 (*continued*).	Number of appointments to be made by Secretary of State.	Repealed by S.L.R. Act, 1878.
	Proportion of members who must have served in India.	Reproduced by s. 39 (3).
	Member to relinquish military duty.	Reproduced by s. 39 (4).
	One member to be a barrister.	Reproduced by s. 39 (3).
	Number of appointments to be made by Crown.	Reproduced by s. 39 (1). All members are now appointed by the Crown. See 32 & 33 Vict. c. 97, s. 8.
	Power to appoint commander-in-chief an extraordinary member.	Reproduced by s. 40 (1).
s. 4.	Present members of governor-general's council to continue.	Not reproduced. Spent.
	Power to appoint a fifth member.	Not reproduced. Spent.
	Salary of members . .	Reproduced by s. 80.
s. 5.	Power of Secretary of State, or Crown, to make provisional appointment to office of member of governor-general's council.	Reproduced by s. 83. As to Secretary of State superseded by 32 & 33 Vict. c. 97, s. 8.
s. 6.	Appointment and powers of president of governor-general's council.	Reproduced by s. 45.
	Powers of governor-general when absent from council.	Reproduced by s. 47 (1).
s. 7.	Absence of governor-general or president from council.	Reproduced by s. 46. Amended by 9 Edw. VII, c. 4, s. 4.
s. 8.	Power to make rules and orders for governor-general's executive council.	Reproduced by s. 43 (2).
s. 9.	Council, where to assemble .	Reproduced by s. 42 (1).
	Governor of Madras or Bombay, when to be an extraordinary member of governor-general's council.	Reproduced by s. 40 (2).
	Lieutenant-governor, when to be an additional member of the council.	Reproduced by s. 60 (5). As to chief commissioners, see 33 & 34 Vict. c. 3, s. 3.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, *s. 10.*	Appointment of additional members of council for legislation.	Amended by 9 Edw. VII, c. 4, s. 1 (1). Repealed in part by 9 Edw. VII, c. 4, s. 8. Reproduced by s. 60.
s. 11.	Term of office of additional members.	Reproduced by s. 60. Repealed in part by 9 Edw. VII, c. 4, s. 8.
s. 12.	Resignation of additional member.	Reproduced by s. 88 (1).
s. 13.	Power for governor-general to fill vacancies of additional members.	Repealed, 55 & 56 Vict. c. 14, s. 4.
s. 14.	Incompleteness of proportion of non-official members not to invalidate law.	Reproduced by s. 79 (6).
s. 15.	President, quorum, and casting vote at legislative meetings of the governor general's council.	Reproduced by s. 62. Amended and repealed in part by 9 Edw. VII, c. 4, ss. 4, 8.
s. 16.	First legislative meeting .	Repealed by S.L.R. Act, 1892.
s. 17.	Times and places of subsequent legislative meetings.	Reproduced by s. 61.
s. 18.	Rules for conduct of legislative business.	Reproduced by s. 67.
s. 19.	Business at legislative meetings.	Amended by 9 Edw. VII, c. 4, s. 5. Reproduced by s. 64.
s. 20.	Assent of governor-general to acts of his council.	Reproduced by s. 65.
s. 21.	Power of Crown to disallow Acts.	Reproduced by s. 66.
s. 22.	Legislative power of Governor-General in Council.	Reproduced by s. 63 (1), (4).
	Governor-General in Council not to have power to repeal or affect—	Reproduced by s. 63 (2).
	(1) The Indian Councils Act, 1861, or	Reproduced by s. 63 (2) (a).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, s. 22 (*continued*).	(2) 3 & 4 Will. IV, c. 85, 16 & 17 Vict. c. 95, 17 & 18 Vict. c. 77, 21 & 22 Vict. c. 106, or 22 & 23 Vict. c. 41, or	Not reproduced. So much of these Acts as is now in force is embodied in the Digest. As to 3 & 4 Will. IV, c. 85, ss. 84 and 86, see 32 & 33 Vict. c. 98, s. 3, as partially repealed by S. L. R. (No. 2) *Act, 1893*.
	(3) Any Act enabling the Secretary of State to raise money, or	Reproduced by s. 63 (2) (*c*).
	(4) The Army Acts, or	Reproduced by s. 63 (2) (*d*).
	(5) Any Act of Parliament passed after 1800 affecting Her Majesty's Indian territories.	Reproduced by s. 63 (2) (*b*).
	Governor-General in Council not to have power to pass laws affecting authority of Parliament, &c.	Reproduced by s. 63 (2). The reference to the East India Company is omitted as obsolete.
s. 23.	Power to make ordinances .	Reproduced by s. 69.
	Such ordinances may be superseded by Acts.	Not reproduced; covered by s. 63 (4).
s. 24.	Laws made by Governor-General in Council not invalid because affecting prerogative of the Crown.	Reproduced by s. 79 (*a*).
s. 25.	Validation of laws made for the non-regulation provinces.	Not reproduced. Spent.
s. 26.	Leave of absence to ordinary members of council.	Reproduced by s. 81.
s. 27.	Vacancy in office of ordinary member of council.	Reproduced by s. 87.
s. 28.	Power to make rules and orders for Executive Councils of Madras and Bombay.	Reproduced by s. 54 (2).
s. 29.	Appointment of additional members of council for Madras and Bombay.	Reproduced by s. 71. Repealed in part by 9 Edw. VII, c. 4, s. 8.
s. 30.	Term of office of additional members.	Reproduced by s. 71 (7). Repealed in part by 9 Edw. VII, c. 4, s. 8.
s. 31.	Resignation of additional member.	Reproduced by s. 88 (1).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, s. 32.	Power for governor of presidency to fill vacancies of additional members.	Repealed, 55 & 56 Vict. c. 14, s. 4.
s. 33.	Incompleteness of proportion of non-official members not to invalidate law.	Reproduced by s. 79 (c).
s. 34.	President of governor's council.	Amended by 9 Edw. VII, c. 4, s. 4. Reproduced by s. 72 (2).
	Quorum and casting vote at legislative meetings.	Repealed in part and amended by 9 Edw. VII, c. 4. Reproduced by s. 72 (1), (4).
s. 35.	First legislative meeting .	Repealed, S. L. R. Act, 1892.
s. 36.	Time and place of legislative meetings.	Reproduced by s. 72 (5).
s. 37.	Rules for conduct of business at legislative meetings.	Reproduced by s. 77 (5).
s. 38.	Business at legislative meetings.	Reproduced by s. 77 (1), (2), (4).
s. 39.	Assent of governor to Acts of local council.	Reproduced by s. 78 (1).
s. 40.	Assent of governor-general to such Acts.	Reproduced by s. 78 (3), (4).
s. 41.	Power of Crown to disallow such Acts.	Reproduced by s. 78 (5), (6).
s. 42.	Legislative powers of local councils.	Reproduced by s. 76 (1).
	Power to repeal laws made in India before 1861.	Amended by 55 & 56 Vict. c. 14, s. 5. Reproduced by s. 76 (2).
	Local legislature not to have power to affect Acts of Parliament.	Reproduced by s. 76 (4).
s. 43.	Sanction required to legislation by local councils in certain cases.	Reproduced by s. 76 (3), (5).
s. 44.	Power to establish legislatures in Bengal, the North-Western Provinces, and the Punjab.	Spent. See s. 70.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 67, s. 45.	Constitution of councils of lieutenant-governors.	Superseded in part by 9 Edw. VII, c. 4, ss. 1 (2), 6. Reproduced by s. 73 (1), (2), (3).
	Procedure at meetings of lieutenant-governor's council.	Reproduced by s. 75. Repealed in part by 9 Edw. VII, c. 4, s. 8. Amended by 9 Edw. VII, c. 4, s. 4.
s. 46.	Power to constitute new provinces and to appoint a lieutenant-governor for each, and declare and limit his authority.	Reproduced by s. 74.
s. 47.	Power to fix and alter boundaries.	Reproduced by s. 74 (1).
	Saving as to laws . . .	Reproduced by s. 74 (2).
s. 48	Legislative powers of Lieutenant-Governors in Council.	Reproduced by s. 76.
	Nomination of members of lieutenant-governors' councils.	Reproduced by ss. 73, 79 (6).
	Conduct of business in lieutenant-governors' councils.	Reproduced by s. 77.
	Assent to, and disallowance of, acts of lieutenant-governors' councils.	Reproduced by s. 78.
s. 49.	Previous assent of Crown to proclamation—	
	Constituting councils .	Reproduced by s. 74.
	Altering boundaries . .	Reproduced by s. 74.
	Constituting new provinces	Reproduced by s. 74.
ss. 50, 51.	Governor of Madras or Bombay to fill vacancy in office of governor-general.	Reproduced by s. 85. Amended as to Bengal by 2 & 3 Geo. V, c. 6, s. 4.
s. 52.	Saving of certain rights, powers, and things done.	Reproduced by s. 121.
s. 53	Meaning of term 'in council.'	Effect reproduced by language of Digest, see ss. 50–54, &c.
s. 54.	. . . . .	Repealed, S. L. R. Act, 1878.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 104.	**The Indian High Courts Act, 1861.**	
s. 1.	Power to establish high courts at Calcutta, Madras, and Bombay.	Repealed, S. L. R. Act, 1892.
s. 2.	Constitution of those courts .	Reproduced by s. 96. Amended by 1 & 2 Geo. V, c. 18, ss. 1, 3.
s. 3.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 4.	Tenure of office of judges .	Reproduced by s. 97 (1).
	Resignation of judges to be submitted to governor-general or local Government.	Reproduced by s. 97 (2).
s. 5.	Precedence of judges .	Reproduced by s. 98.
s. 6.	Salaries, &c., of judges . .	Reproduced by s. 99.
s. 7.	Vacancy in office of chief justice or other judge.	Reproduced by s. 100.
s. 8.	Abolition of supreme and sadr courts.	Repealed by S. L. R. Act, 1892.
s. 9.	Jurisdiction and powers of high courts.	Reproduced by s. 101 (1).
s 10.	. . . . .	Repealed, 28 & 29 Vict. c. 15, s. 2, which section is itself repealed by S. L. R. Act, 1878.
s. 11.	Provisions applicable to supreme courts and judges thereof to apply to high courts and judges thereof.	Covered by ss. 101, 105–8.
s 12.	Pending proceedings . .	Not reproduced. Spent.
s. 13.	Exercise of jurisdiction by single judges or division courts.	Reproduced by s. 103 (1).
s. 14.	Chief justice to determine what judges shall sit alone or in the division courts.	Reproduced by s. 103 (2).
s. 15.	Powers of high courts with respect to subordinate courts.	Reproduced by s. 102.
s. 16.	Power to establish new high court.	Not reproduced. Exhausted by establishment of high court at Allahabad. Since revived by 1 & 2 Geo. V, c. 18, s. 2.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
24 & 25 Vict. c. 104, s. 16 (*continued*).	Number and qualifications of judges of new courts. Provisions applicable to new courts.	Covered by ss. 96–103.
s. 17.	Power to revoke, alter, or supplement letters patent of high courts.	Spent. Repealed as to U. K. by S. L. R. Act, 1893.
s. 18.	. . . . .	Repealed by 28 & 29 Vict. c. 15, s. 2, which section is itself repealed by S. L. R. Act, 1878.
s. 19.	Definition of 'barrister . Local government . .	Reproduced by s. 96. Reproduced by ss. 97 (2), 100, 102.
28 & 29 Vict. c. 15,	The Indian High Courts Act, 1865.	
s. 1.	Extension of time for granting new letters patent for high courts.	Repealed, S. L. R. Act, 1893.
s. 2.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 3.	Power to make orders altering local limits of jurisdiction of high courts.	Reproduced by s. 104.
s. 4.	Power to disallow such orders.	
s. 5.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 6.	Saving of legislative powers of Governor-General in Council.	Reproduced by s. 104.
28 & 29 Vict. c. 17,	The Government of India Act, 1865.	
s. 1.	Power of Governor-General in Council to legislate for British subjects in Native States.	Reproduced by s. 63 (1) (*b*).
s. 2.	Foregoing section to be read as part of s. 22 of 24 & 25 Vict. c. 67.	Section 22 is reproduced by s. 63.
s. 3.	. . . . .	Repealed, S. L. R. Act, 1878.
s. 4.	Power to appoint territorial limits of presidencies and lieutenant-governorships.	Reproduced by s. 57.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
28 & 29 Vict. c. 17, s. 5.	Disallowance by Secretary of State of proclamation altering boundaries of province.	Reproduced by s. 57, prov. (2)
	Sanction of Crown to proclamation transferring entire district.	Reproduced by s. 57, prov. (1)
32 & 33 Vict. c. 97, s. 1.	**The Government of India Act, 1869**	
	Vacancies in Council of India to be filled by Secretary of State.	Reproduced by s. 3 (2).
s. 2.	Term of office of member of Council of India.	Reproduced by s. 3 (4). Amended by 7 Edw. VII, c. 35, s. 4.
s. 3.	Power to reappoint member.	Reproduced by s. 3 (5).
s. 4.	Former Acts to apply to future members.	Effect reproduced by language of Digest.
s. 5.	. . . . .	Repealed, S. L. R. Act, 1883.
s. 6.	Resignation of member . .	Reproduced by s. 3 (7).
	Pension of members appointed before the Act.	Repealed as to U. K. by S. L. R (No. 2) Act, 1893.
s. 7.	Claims to compensation .	Reproduced by s. 5.
s. 8.	Appointment of ordinary members of the councils of the governor-general and governors.	Reproduced by ss. 39 (1) and 51 (1).
32 & 33 Vict. c. 98.	*The Indian Councils Act, 1869.*	
s. 1.	Power of Governor-General *in Council to legislate for* native Indian subjects.	Reproduced by s. 63 (1) (*c*).
s. 2.	. . . . .	Repealed, S. L. R. Act, 1883.
s. 3.	Power to repeal or amend ss. 81 to 86 of 3 & 4 Will. IV, c. 85.	Effect reproduced by language of Digest.
33 & 34 Vict. c. 3,	**The *Government of India* Act, 1870.**	
s. 1.	Power to make regulations .	Reproduced by s. 68.
s. 2.	Regulations to be sent to Secretary of State.	Reproduced by s. 68 (3).
	Laws and regulations to control and supersede prior regulations.	Covered by ss. 63 (1), 68.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
33 & 34 Vict. c. 3, s. 3.	Lieutenant-governor or chief commissioner, when to be an additional member of governor-general's council.	Reproduced by s. 60 (5).
s. 4.	. . . . .	Repealed, S. L. R. Act, 1883
s. 5.	Power of governor-general to act against opinion of council.	Reproduced by s. 44 (2), (3).
s. 6.	Power to appoint natives of India to offices reserved to the covenanted civil service.	Reproduced by s. 94.
33 & 34 Vict. c. 59,	**The East India Contracts Act, 1870.**	
s. 1.	Validity of deeds, &c. . .	Repealed, S. L. R. Act, 1883.
s. 2.	Power to vary form of execution of assurances.	Reproduced by s. 33 (2).
34 & 35 Vict. c. 34,	**The Indian Councils Act, 1871.**	
s. 1.	Validation of Acts of local legislatures conferring jurisdiction over European British subjects.	Reproduced by s. 79 (c).
s. 2	Committal of European British subjects.	Not reproduced. Made unnecessary by Indian Act V of 1898.
s. 3.	Power of local legislatures to amend and repeal Acts declared valid by Indian Act XXII of 1870.	Not reproduced. Superseded by 55 & 56 Vict. c. 14, s. 5. See s. 76 (4).
34 & 35 Vict. c. 62,	**The Indian Bishops Act, 1871.**	
s. 1.	Power to make rules as to leave of absence of Indian bishops.	Reproduced by s. 114.
	Proviso as to limits of expense.	Reproduced by s. 113.
37 & 38 Vict. c. 77,	**The Colonial Clergy Act, 1874.**	
s. 13.	Provisions as to Indian bishops.	Reproduced by s. 110 (5).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
37 & 38 Vict. c. 91,	**The Indian Councils Act, 1874.**	
s. 1.	Power to appoint a sixth member to governor-general's council.	Reproduced by s. 39 (1), (2).
	Provisions as to other members to apply to the sixth member.	
	The sixth member to be called member for public works.	Repealed by 4 Edw. VII, c. 26.
s. 2.	Power to diminish number of members of governor-general's council to five.	Reproduced in substance by s. 39 (2). Repealed in part by 4 Edw. VII, c. 26.
	When number diminished, no temporary appointment to be made.	Reproduced by s. 87.
s. 3.	Saving of— (1) 24 & 25 Vict. c. 67, s. 8, and 33 & 34 Vict. c. 3, s. 5. (2) Powers of governor-general in respect of his council.	**Provisions saved, reproduced by Digest.**
39 & 40 Vict. c. 7,	**The Council of India Act, 1876.**	
s. 1.	Appointment to Council of India of persons with professional or other peculiar qualifications.	Repealed by 7 Edw. VII, c. 35, s. 5.
43 Vict. c. 3, s. 1.	**The Indian Salaries and Allowances Act, 1880.** Short title	Not reproduced. Spent.
s. 2.	Allowances of certain officials for equipment and voyage.	Reproduced by ss. 80, 113 (1).
s. 3.	Power to fix salaries and allowances of bishops and archdeacons of Calcutta, Madras, and Bombay.	Reproduced by s. 113 (1).
	Saving as to salaries at commencement of Act.	Not reproduced. Spent.
s. 4.	Charges on Indian revenues not to be increased.	Reproduced by ss. 80, 113.
s. 5.	Repeal of enactments	Repealed, S. L. R. Act, 1894.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
44 & 45 Vict. c. 63,	**The India Office Auditor Act, 1881.**	
s. 1.	Superannuation allowance of India Office auditor and his assistants.	Reproduced by s. 30 (10).
s. 2.	Short title	Not reproduced.
47 & 48 Vict. c. 38,	**The Indian Marine Service Act, 1884.**	
s. 1.	Short title	Not reproduced.
ss. 2, 3.	Power of Governor-General in Council to make laws for the Indian Marine Service.	Reproduced by **s. 63 (1) (*d*),** (5), (6).
s. 4.	Such laws—	
	to have same force as Acts of Parliament.	Not reproduced. There is no such provision in 24 & 25 Vict. c. 67.
	to be judicially noticed by all courts.	Not reproduced. As to Indian courts, see Indian Act I of 1872, s. 57.
s. 5.	Restriction on legislation authorizing sentence of death.	Reproduced by s. 63 (3).
s. 6.	Power to place Indian Marine Service under Naval Discipline Act in time of war.	Left outstanding.
52 & 53 Vict. c. 65,	**The Council of India Reduction Act, 1889.**	
s. 1.	Power to reduce number of Council of India.	**Repealed by 7 Edw. VII, c. 35, s. 5.**
s. 2.	Short title	
55 & 56 Vict. c. 14,	**The Indian Councils Act, 1892.**	
s. 1.	Increase of number of members of Indian legislative councils.	Repealed by 9 Edw. VII, c. 4, s. 8.
s. 2.	Business at legislative meetings	Repealed by 9 Edw. VII, c. 4, s. 8.
s. 3.	Meaning of expressions referring to Indian territories.	Reproduced by s. 63.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
55 & 56 Vict. c. 14, s. 4.	Vacancies in number of additional members of councils.	Reproduced by s. 88. Repealed in part by 9 Edw. VII, c. 4, s. 8.
s. 5.	Powers of Indian local legislatures.	Reproduced by s. 76.
s. 6.	Definitions . . .	Reproduced by ss. 70, 74, 124.
s. 7.	Saving of powers of Governor-General in Council.	Not reproduced.
s. 8.	Short title	Not reproduced.
56 & 57 Vict. c. 70,	The East India Loan Act, 1893.	
s. 5.	Signature of debentures and bills.	Reproduced by s. 28 (3).
3 Edw. VII, c. 11.	The Contracts (India Office) Act, 1903.	Reproduced by s. 32.
4 Edw. VII, c. 26.	The Indian Councils Act 1904.	Effect given by language of s. 39.
7 Edw. VII, c. 35,	The Council of India Act, 1907.	
s. 1.	Number of members . .	Reproduced by s. 3 (1).
s. 2.	Newly appointed members to have last left India within five years.	Reproduced by s. 3 (3).
s. 3.	Salary of members . .	Reproduced by s. 3 (6).
s. 4.	Term of office of members .	Reproduced by s. 3 (4).
s. 5.	Repeals	Spent.
9 Edw. VII, c. 4,	The Indian Councils Act, 1909.	
s. 1.	Election of members; number of members; quorum; term of office; casual vacancies.	Reproduced by ss. 60, 71, 73.
s. 2 (1)	Number and qualification of members of Madras and Bombay Councils.	Reproduced by s. 51 (2), (3).

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
9 Edw. VII, c. 4, s. 2 (2).	Casting vote of President of Madras or Bombay Council.	Covered by s. 53.
s. 3 (1).	Bengal Executive Council .	Spent as to Bengal. Applied to Bihar and Orissa by 2 & 3 Geo. V, c. 6, s. 2. Referred to in note to s. 55 (1).
s. 3 (2).	Executive Councils for Lieutenant-Governors.	Referred to in note to s. 55 (1).
s. 3 (3).	Rules and orders for transaction of business in Lieutenant-Governors' Councils.	
s. 3 (4).	Appointment and functions of members of Lieutenant-Governors' Councils.	
s. 4.	Appointment and functions of Vice-Presidents.	Referred to in notes to ss. 45, 72, 75, and reproduced by ss. 62 (1), (2), 72 (2), 75 (1), 85 (4), 86 (1).
s. 5.	Conduct of non-legislative business in Legislative Councils.	Reproduced by ss. 64, 77.
s. 6.	Regulations as to nomination and election of members, &c.	Reproduced by ss. 60, 71, 73.
s. 7.	Proclamations, &c., to be laid before Parliament.	Reproduced by s. 123A.
s. 8.	Short titles, commencement, repeals.	Spent.
Sch. I.	Maximum numbers of members of Legislative Councils.	Repealed in part and amended by 2 & 3 Geo. V, c. 6, s. 4 (1). Reproduced by Appendix II.
Sch. II.	*Repeals*	Spent.
1 & 2 Geo. V, c. 18,	**The Indian High Courts Act, 1911.**	
s. 1.	Maximum number of Judges.	Reproduced by s. 96 (1).
s. 2.	Additional High Courts .	Referred to in note (*a*) to s. 96 and note (*b*) to s. 104.

Session and Chapter.	*Title and Short Contents.*	*Remarks.*
1 & 2 Geo. V, c. 18,		
s. 3.	Temporary Judges . .	Referred to in note (*b*) to s. 96.
s. 4.	Salaries of Judges . .	Reproduced by s. 22 (2).
1 & 2 Geo. V, c. 25,	**The Government of India Act Amendment Act, 1911.**	
s. 1.	Gratuities to personal representatives.	Reproduced by s. 19.
s. 2.	*Confirmation of past grants of* gratuities.	*Spent.*
2 & 3 Geo. V, c. 6,	**The Government of India Act, 1912.**	
s. 1 (1).	Powers of Governor and Council of Fort William in Bengal.	Reproduced by language of Digest.
s. 1 (1), prov. (*b*).	Advocate-General of Bengal .	Referred to in footnote to s. 71 (4).
s. 1 (2).	Power to extend limits of Calcutta.	Reproduced by s. 59.
s. 2.	Bihar and Orissa Executive Council.	Referred to in note to s. 55 (1).
s. 3.	Legislative Councils for Chief Commissioners.	Referred to in notes to ss. 58, 74.
s. 4 (1).	Amendments . . .	Reproduced by language of Digest.
	Repeals	Spent.
s. 4 (2)	Power to transfer territories .	Reproduced in note to s. 57.
Schedule, Part I.	Amendments . . .	Reproduced by s. 85 and Appendix II.
Schedule, Part II.	Repeals	Spent.

CHAPTER IV

APPLICATION OF ENGLISH LAW TO NATIVES OF INDIA[1]

Introduction of English law into India.

ENGLISH law was introduced into India by the charters under which courts of justice were established for the three presidency towns of Madras, Bombay, and Calcutta. The charters introduced the English common and statute law in force at the time, so far as it was applicable to Indian circumstances. The precise date at which English law was so introduced has been a matter of controversy. For instance, it has been doubted whether the English statute of 1728, under which Nuncomar was hanged, was in force in Calcutta at the time of his trial, or of the commission of his offence. So also there has been room for argument as to whether particular English statutes, such as the Mortmain Act, are sufficiently applicable to the circumstances of India to be in force

[1] This chapter is based on a paper read before the Society of Comparative Legislation in 1896.

Among the most accessible authorities used for the purpose of this chapter are Harington's *Analysis of the Bengal Regulations*, Beaufort's *Digest of the Criminal Law of the Presidency of Fort William*, the introduction to Morley's *Digest of Indian Cases*, the editions published by the Indian Legislative Department of the Statutes relating to India, of the general Acts of the Governor-General in Council, and of the Provincial Codes, and the Index to the enactments relating to India. The numerous volumes of reports by Select Committees and by the Indian Law Commissioners contain a mine of information which has never been properly worked.

The best books on existing Hindu law are those by Mr. J. D. Mayne and by West (Sir Raymond) and Bühler, written from the Madras and Bombay points of view respectively. Sir R. K. Wilson has published a useful Digest of Anglo-Mahomedan Law. Reference should also be made to the series of Tagore Law Lectures. There are books by the late Sir C. L. Tupper and Sir W. H. Rattigan on the customary law of the Punjab.

On the general subject dealt with by this chapter *see* Bryce, *Studies in History and Jurisprudence*, Essay II (now published separately).

there.[1] But Indian legislation, and particularly the enactment of the Indian Penal Code, has set at rest most of these questions.

Charter of 1753.

George II's charter of 1753, which reconstituted the mayors' courts in the three presidency towns of Madras, Bombay, and Calcutta, expressly excepted from their jurisdiction all suits and actions between the Indian natives only, and directed that such suits and actions should be determined among themselves, unless both parties should submit them to the determination of the mayor's court. But, according to Mr. Morley, it does not appear that the native inhabitants of Bombay were ever actually exempted from the jurisdiction of the mayor's court, or that any peculiar laws were administered to them in that court.[2]

Warren Hastings's 'Plan' of 1772.

It was not, however, until the East India Company took over the active administration of the province of Bengal that the question of the law to be applied to natives assumed a seriously practical form. In 1771 the Court of Directors announced their intention of 'standing forth as Diwan;' in other words, of assuming the administration of the revenues of the province, a process which involved the establishment, not merely of revenue officers, but of courts of civil and criminal justice. In the next year Warren Hastings became Governor of Bengal, and one of his first acts was to lay down a plan for the administration of justice in the interior of Bengal. What laws did he find in force? In criminal cases the Mahomedan Government had established its own criminal law, to the exclusion of that of the Hindus. But in civil cases Mahomedans and Hindus respectively were governed by their personal laws, which claimed divine authority, and were enforced by a religious as well as by a civil sanction.

[1] The question is discussed at length in Mr. Whitley Stokes's preface to the first edition of The Older Statutes relating to India, reprinted in his Collection of Statutes relating to India (Calcutta, 1881). See also the *Mayor of Lyons* v. *East India Company*, 3 State Trials, N. S., 647, and the other authorities cited in note (*a*) to s. 108 of the Digest

[2] Morley's *Digest*, Introduction, p. clxix.

Gradual modification of criminal law.

The object of the East India Company was to make as little alteration as possible in the existing state of things. Accordingly the country courts were required, in the administration of criminal justice, to be guided by Mahomedan law. But it soon appeared that there were portions of the Mahomedan law which no civilized Government could administer. It was impossible to enforce the law of retaliation for murder, of stoning for sexual immorality, or of mutilation for theft, or to recognize the incapacity of unbelievers to give evidence in cases affecting Mahomedans. The most glaring defects of Mahomedan law were removed by regulations, and an interesting picture of the criminal law, so patched and modified, as it was administered in the country courts of Bengal about the year 1821, is given in Mr. Harington's Analysis of the Bengal Regulations.[1] The process of repealing, amending, and supplementing the Mahomedan criminal law by enactments based on English principles went on until the Mahomedan law was wholly superseded by the Indian Penal Code in 1860.[2] A general code of criminal procedure followed in 1861, and the process of superseding native by European law, so far as the administration of criminal justice is concerned, was completed by the enactment of the Evidence Act of 1872.

Observance of native rules as to family law.

With respect to civil rights, Warren Hastings's plan of 1772 directed, by its twenty-third rule, that 'in all suits regarding marriage, inheritance, and caste, and other[3] religious usages and institutions, the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to Gentus (Hindus) shall be invariably adhered to.' 'Moulavies or Brahmins' were directed to attend the courts for the purpose

[1] See also Sir R. K. Wilson's *Introduction to Anglo-Mahomedan Law*, p. 113; and for a description of the criminal law of India as it existed in 1852, see the evidence given in that year by Mr. F. Millett before the Select Committee of the House of Lords on the East India Company's Charter.

[2] It had been previously superseded, in 1827, by a written code in the Bombay Presidency (Morley, *Digest*, Introduction. pp. cliv, clxxvi).

[3] The use of 'other' implies that marriage and inheritance were treated as religious institutions.

of expounding the law and giving assistance in framing the decrees.[1]

The famous 'Regulating Act' of 1773 empowered the Governor-General and Council of Bengal to make rules, ordinances, and regulations for the good order and civil government of the settlement at Fort William (Calcutta) and other factories and places subordinate thereto, and in 1780 the Government of Bengal exercised this power by issuing a code of regulations for the administration of justice, which contained a section (27) embodying the provisions and exact words of Warren Hastings's regulation. A revised code of the following year re-enacted this section with the addition of the word 'succession.'

The English Act of 1781 (21 Geo. III, c. 70), which was passed for amending and explaining the Regulating Act, recognized and confirmed the principles laid down by Warren Hastings.

Whilst empowering the Supreme Court at Calcutta to hear and determine all manner of actions and suits against all and singular the inhabitants of Calcutta, it provided (s. 17) that 'their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined in the case of Mahomedans by the laws and usages of the Mahomedans, and in the case of Gentus (Hindus) by the laws and usages of Gentus; and where one only of the parties shall be a Mahomedan or Gentu, by the laws and usages of the defendant.' It went on to enact (s. 18) that 'in order that regard should be had to the civil and religious usages of the said natives, the rights and authorities of fathers of families and masters of families, according as the same might have been exercised by the Gentu or Mahomedan law, shall be preserved to them respectively within their said families; nor shall any acts done in consequence of the rule and law of caste respecting the members of the said families only be held and adjudged a crime, although

[1] This direction was repealed by Act XI of 1864.

the same may not be held justifiable by the laws of England.' Enactments to the same effect have been introduced into numerous subsequent English and Indian enactments.[1]

These provisions of the Act of 1781, and the corresponding provisions of the Act of 1797 relating to the recorders' courts of Madras and Bombay (afterwards superseded by the supreme courts, and now by the high courts), are still in force, but are not included in the list of English statutory provisions which, under the Indian Councils Act of 1861 (24 & 25 Vict. c. 67), Indian legislatures are precluded from altering. Consequently they are alterable, and have in fact been materially affected, by Indian legislation. For instance, the native law of contract has been almost entirely superseded by the Contract Act of 1872 and other Acts. And the respect enjoined for the rights of fathers and masters of families and for the rules of caste did not prevent the Indian legislature from abolishing domestic slavery or suttee.

The Lex Loci Act.

A Bengal regulation of 1832 (VII of 1832), whilst re-enacting the rules of Warren Hastings which had been embodied in previous regulations, qualified their application by a provision which attracted little attention at the time, but afterwards became the subject of considerable discussion.[2] It declared that these rules 'are intended and shall be held to apply to such persons only as shall be *bona fide* professors of those religions at the time of the application of the law to the case, and were designed for the protection of the rights of such persons, not for the deprivation of the rights of others.

[1] See, e.g., Bengal Regulation III of 1793, s. 21; Bengal Regulation IV of 1793, s. 4; 37 Geo. III, c. 142 (relating to the recorders' courts at Madras and Bombay), ss. 12, 13; Bombay Regulation IV of 1827, s. 26; Act IV of 1872, s. 5 (Punjab), as amended by Act XII of 1878; Act III of 1873, s. 16 (Madras); Act XX of 1875, s. 5 (Central Provinces); Act XVIII of 1876, s. 3 (Oudh); Act XII of 1887, s. 37 (Bengal, North-Western Provinces, and Assam); Act XI of 1889, s. 4 (Lower Burma); and clauses 19 and 20 of the Charter of 1865 of the Bengal High Courts, the corresponding clauses of the Madras and Bombay Charters, and clauses 13 and 14 of the Charter of the North-Western Provinces High Court.

[2] See Morley's *Digest*, Introduction, pp. clxxiii, clxxxiii.

Whenever, therefore, in any civil suit, the parties to such suits may be of different persuasions, where one party shall be of the Hindu and the other of the Mahomedan persuasion, or where one or more of the parties to such suit shall not be either of the Mahomedan or Hindu persuasion, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision shall be governed by the principles of justice, equity, and good conscience; it being clearly understood, however, that this provision shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles.'

In the year 1850 the Government of India passed a law (XXI of 1850) of which the object was to extend the principle of this regulation throughout the territories subject to the government of the East India Company. It declared that 'So much of any law or usage now in force within the territories subject to the government of the East India Company as inflicts on any person forfeiture of rights or[1] property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law in the courts of the East India Company, and in the courts established by Royal charter within the said territories.'

This Act, which was known at the time of its passing as the Lex Loci Act,[2] and is still in force, excited considerable opposition among orthodox Hindus as unduly favouring converts, and has been criticized from the Hindu point of

[1] An attempt has been made to argue that this phrase was an accidental misprint for 'rights *of* property.' But there seems no foundation for this suggestion.

[2] This title is a misnomer. It was properly applied to other provisions which were subsequently dropped. See the evidence of Mr. Cameron before the Select Committee of the House of Lords in 1852.

view with respect to its operation on the guardianship of children in a case where one of two parents had been converted from Hinduism to Mahomedanism.

Law applicable to persons neither Hindus nor Mahomedans.

It will have been observed that Warren Hastings's rule and the enactments based upon it apply only to Hindus and Mahomedans. There are, of course, many natives of India who are neither Hindus nor Mahomedans, such as the Portuguese and Armenian Christians, the Parsees, the Sikhs, the Jains, the Buddhists of Burma and elsewhere, and the Jews. The tendency of the courts and of the legislatures has been to apply to these classes the spirit of Warren Hastings's rule and to leave them in the enjoyment of their own family law, except so far as they have shown a disposition to place themselves under English law.

Rules as to local usage in Bombay and the Punjab.

When Mountstuart Elphinstone legislated for the territories then recently annexed to the Bombay Presidency, Anglo-Indian administrators had become aware that the sacred or semi-sacred text-books were not such trustworthy guides as they had been supposed to be in the time of Warren Hastings, and that local or personal usages played a much more important part than had previously been attributed to them. Accordingly, the Bombay regulation deviated from the Bengal model by giving precedence to local usage over the written Mahomedan or Hindu law.[1] Regulation IV of 1827 (s. 26), which is still in force in the Bombay Presidency, directed that 'The law to be observed in the trial of suits shall be Acts of Parliament and regulations of Government applicable to the case; in the absence of such Acts and regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant, and, in the absence of specific law and usage, justice, equity, and good conscience alone.' The same principle has since been applied

[1] It is also important to observe that the Mahomedan criminal law had not been introduced into the territories under Bombay to anything like the same extent as into Bengal. See on this subject the Judicial Letters from Bombay of July 29, 1818, pars. 186 seq., printed in the Reports to Parliament on East India Affairs for the year 1819.

to the Punjab, which is pre-eminently the land of customary law, and where neither the sacred text-books of the Hindus nor those of the Mahomedans supply a safe guide to the usages actually observed. In this province the Punjab Laws Act[1] expressly directs the courts to observe any custom applicable to the parties concerned, which is not contrary to justice, equity, or good conscience, and has not been altered or abolished by law, or declared by competent authority to be void.

Native Christians and Armenians.

Native Christians have for the most part placed themselves, or allowed themselves to be placed, under European law. As long ago as 1836 the Armenians of Bengal presented a petition to the Governor-General, in which, after setting forth the destitution of their legal condition, they added, 'As Armenians have ceased to be a nation since the year of our Lord 1375, and no trace of their own law is now to be discovered,[2] your petitioners humbly submit that the law of England is the only one that can, upon any sound principle, be allowed to prevail.'[3]

Parsees.

The Parsees have obtained the enactment of an intestate succession law of their own (XXI of 1865).

Justice, equity, and good conscience.

In matters for which neither the authority of Hindu or Mahomedan text-books or advisers nor the regulations and other enactments of the Government supplied sufficient guidance, the judges of the civil courts were usually directed to act in accordance with 'justice, equity, and good conscience.' An Englishman would naturally interpret these words as meaning such rules and principles of English law as he happened to know and considered applicable to the case; and thus, under the influence of English judges, native law and usage were, without express legislation, largely supplemented, modified, and superseded by English law.

State of law at passing of

The inquiries and reports which preceded the Charter Act of 1833 directed attention to the unsatisfactory condition

[1] IV of 1872, s. 5, as altered by XII of 1878, s. 1.

[2] This, of course, is merely the statement of the Bengal Armenians of 1836. See Dareste, *Études d'Histoire du Droit*, pp. 119 seqq.

[3] Morley's *Digest*, Introduction, p. clxxxvii.

of the law in British India at that time, and, in particular, to the frequent difficulty of ascertaining what the law was and where it was to be found. The judges of the Calcutta Supreme Court, after describing generally the state of the law, went on to say: 'In this state of circumstances no one can pronounce an opinion or form a judgement, however sound, upon any disputed right of persons respecting which doubt and confusion may not be raised by those who may choose to call it in question; for very few of the public or persons in office at home, not even the law officers, can be expected to have so comprehensive and clear a view of the Indian system as to know readily and familiarly the bearings of each part of it on the rest. There are English Acts of Parliament specially provided for India, and others of which it is doubtful whether they apply to India wholly, or in part, or not at all. There is the English Common Law and Constitution, of which the application is in many respects still more obscure and perplexed; Mahomedan Law and Usage; Hindu Law, Usage, and Scripture; Charters and Letters Patent of the Crown; regulations of the Government, some made declaredly under Acts of Parliament particularly authorizing them, and others which are founded, as some say, on the general power of Government entrusted to the Company by Parliament, and as others assert on their rights as successors of the old Native Governments; some regulations require registry in the Supreme Court, others do not; some have effect generally throughout India, others are peculiar to one presidency or one town. There are commissions of the Governments, and circular orders from the Nizamut Adawlut, and from the Dewanny Adawlut; treaties of the Crown; treaties of the Indian Government; besides inferences drawn at pleasure from the application of the "*droit public*," and the law of nations of Europe, to a state of circumstances which will justify almost any construction of it, or qualification of its force.'[1]

Charter Act of 1833.

[1] See Hansard (1833), xviii. 729.

First Indian Law Commission.

It was for the purpose of remedying this unsatisfactory state of things that an Indian Law Commission was appointed under the Charter Act of 1833, with Macaulay at its head. The commission sat for many years, and produced several volumes of reports, which in some cases supplied the basis of Indian legislation. But it was not until 1860 that the Indian Penal Code, its most important achievement, was placed on the Indian Statute Book. The first edition of the Code of Civil Procedure had been passed in 1859, and the first edition of the Code of Criminal Procedure was passed in 1861.[1] The law of Procedure has been supplemented by the Evidence Act (I of 1872) and the Limitation Act (IX of 1908), and by the Specific Relief Act (I of 1877), which stands on the borderland of substantive and adjective law. These Acts apply to all persons in British India, whether European or native, and wholly displace and supersede native law on the subjects to which they relate.

Penal Code, Codes of Civil and Criminal Procedure, &c.

But when the time came for codifying the substantive civil law, it was found necessary to steer clear of, and make exceptions with respect to, important branches of native law.

Indian Succession Act.

The Indian Succession Act, 1865 (X of 1865), which is based on English law, is declared by s. 2 to constitute, subject to certain exceptions, the law of British India applicable to all cases of intestate or testamentary succession. But the exceptions are so wide as to exclude almost all natives of India. The provisions of the Act are declared (s. 331) not to apply to the property of any Hindu, Mahomedan, or Buddhist. And the Government of India is empowered (s. 332) to exempt by executive order from the operation of the whole or any part of the Act the members of any race, sect, or tribe in British India, to whom it may be considered impossible or inexpedient to apply those provisions. Two classes of persons have availed themselves of this exemption —Native Christians in Coorg, and Jews in Aden. The former

[1] These are now represented by Act V of 1908 and Act V of 1898 respectively.

class wished to retain their native rules of succession, notwithstanding their conversion to Christianity. The Jews of British India had agreed to place themselves under the Act, but it was not until some twenty years after the Act had become law that the Jews of Aden, who lived in a territory which is technically part of British India, but who still observed the Mosaic law of succession,[1] discovered that they were subject to a new law in the matter of succession. They petitioned to be released from its provisions, and were by executive order remitted to the Pentateuch.

The operation of the Indian Succession Act has, however, been extended by subsequent legislation.

Oudh Estates Act.

The Oudh Estates Act, 1869 (I of 1869), expressly enabled the taluqdars of Oudh to dispose of their estates by will, and applied certain provisions of the Indian Succession Act to their wills.

Hindu Wills Act.

The Hindu Wills Act (XXI of 1870) applied certain of its provisions to—

(1) all wills and codicils made by any Hindu, Jaina, Sikh, or Buddhist, on or after September 1, 1870, within the territories subject to the Lieutenant-Governor of Bengal, or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature of Madras and Bombay; and

(2) all such wills and codicils made outside those territories and limits so far as relates to immovable property situated within those territories or limits.

But nothing in the Act is to

(3) authorize a testator to bequeath property which he could not have alienated *inter vivos*; or

(4) deprive any persons of any right of maintenance of which, but for the Act, he could not deprive them by will; or

(5) affect any law of adoption or intestate succession; or

[1] See the rulings in Zelophehad's case, Numbers xxvii. 6, xxxvi. 1; and the chapter on Le Droit Israélite in Dareste, *Études d'Histoire du Droit.*

(6) authorize any Hindu, Jaina, Sikh, or Buddhist to create in property any interest which he could not have created before September 1, 1870.

Probate and Administration Act.

The Probate and Administration Act, 1881 (V of 1881), which extends to the whole of British India, applies most of the rules in the Succession Act, 1865, with respect to probate and letters of administration, to the case of every Hindu, Mahomedan, Buddhist, and person exempted under s. 332 of the Indian Succession Act, dying on or after April 1, 1881 (s. 2).

The same section provides that a court is not to receive application for probate or letters of administration until the local Government has, with the previous sanction of the Governor-General in Council, by notification in the official Gazette, authorized it so to do. Such notifications have been since given by the local Governments. The Act, however, is merely a permissive measure, and authorizes, but does not require, application for probate or administration. And it must be remembered that Hindus do not, as a rule, make wills.

Indian Contract Act.

The Indian Contract Act (IX of 1872) does not cover the whole field of contract law, but, so far as it extends, is general in its application, and supersedes the native law of contract. However, it contains a saving (s. 2) for any statute, Act, or regulation not thereby expressly repealed, and for any usage or custom of trade or incident of contract not inconsistent with its provisions. The saving for statutes has been held to include the enactment of George III, under which matters of contract are, within the presidency towns, but not elsewhere, directed to be regulated by the personal law of the party, and thus, paradoxically enough, certain rules of Hindu law have maintained their footing in the last part of British India where they might have been expected to survive.[1]

Negotiable Instruments Act.

The Negotiable Instruments Act, 1881, which corresponds to and formed the precedent for the English Bills of Exchange Act, extends to the whole of British India, but is declared

[1] See note (*a*) to s. 108 of Digest.

(s. 1) not to affect any local usage relating to any instrument in an Oriental language. It therefore preserves the customary rules as to the construction and effect of 'hundis,' or native bills of exchange and promissory notes, except so far as those rules are excluded by the agreement of the parties.[1]

Transfer of Property Act.

The Transfer of Property Act, 1882, which lays down rules with respect to the sale, gift, exchange, mortgage, and leasing of land, and on other points supplements the Contract Act, does not apply to the Punjab or to Burma (except the town of Rangoon); and, within the parts of India to which it extends, it reserves, or keeps in operation, native rules and customs on certain important subjects. For instance, nothing in the Act is to affect the provisions of any enactment not thereby expressly repealed, e.g. the Indian Acts which expressly save local usages in the Punjab and elsewhere. And nothing in the second chapter, which relates to the transfer of property by the act of parties, is to affect any rule of Hindu, Mahomedan, or Buddhist law (s. 2). The provisions as to mortgages recognize and regulate forms of security in accordance with native as well as English usage. Local usages with respect to apportionment of rents and other periodical payments (s. 36), mortgages (s. 98), and leases (ss. 106, 108), are expressly saved. And finally, there is a general declaration (s. 117) that none of the provisions of the chapter relating to leases are to apply to leases for agricultural purposes, except so far as they may be applied thereto by the local Government, with the sanction of the Government of India. Thus the application of these provisions is confined within very narrow limits. The law relating to the tenure of agricultural land is mostly regulated by special Acts, such as the Bengal Tenancy Act (VIII of 1885), and the similar Acts for other provinces.

Trusts Act.

The Indian Trusts Act, 1882 (II of 1882), which codifies the law of trusts, does not apply to the province of Bengal

[1] It is said, however, that the Indian banks refuse to discount hundis unless the parties agree to be bound by the Act.

or to the Presidency of Bombay. And nothing in it is to affect the rules of Mahomedan law as to *wakf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or to apply to public or private religious or charitable endowments (s. 1).

Easements Act.

The Indian Easements Act, 1882 (V of 1882), which is in force in most parts of India outside Bengal,[1] also embodies principles of English law, but is not to derogate from certain Government and customary rights (s. 1).

Guardian and Wards Act.

The Guardian and Wards Act, 1890 (VIII of 1890), which declares the law with respect to the appointment, duties, rights, and liabilities of guardians of minors,[2] provides (s. 6) that, in the case of a minor who is not a European British subject, nothing in the Act is to be construed as taking away or derogating from any power to appoint a guardian which is valid by the law to which the minor is subject. And in the appointment of a guardian the court is, subject to certain directions, to be guided by what, *consistently with the law to which the minor is subject*, appears in the circumstances to be for the welfare of the minor (s. 17).

Law of torts.

The law of torts or civil wrongs, as administered by the courts of British India, whether to Europeans or to natives, is practically English law. The draft of a bill to codify it was prepared some years ago, but the measure has never been introduced.

Subjects to which English and native law respectively apply.

If we survey the whole field of law, as administered by the British Indian courts, and examine the extent to which it consists of English and of native law respectively, we shall find that Warren Hastings's famous rule, though not binding on the Indian legislatures, still indicates the class of subjects with which the Indian legislatures have been chary of inter-

[1] Its operation was extended by Act VIII of 1891.

[2] The age of majority for persons domiciled in British India is by Act IX of 1875 (as amended by s. 52 of Act VIII of 1890) fixed at eighteen, except where before the attainment of that age a guardian has been appointed for the minor by the court, or his property has been placed under the superintendence of the Court of Wards, in which case the minority lasts until twenty-one.

fering, and which they have been disposed to leave to the domain of native law and usage.

The criminal law and the law of civil and criminal procedure are based wholly on English principles. So also, subject to some few exceptions,[1] are the law of contract and the law of torts, or civil wrongs.

But within the domain of family law, including the greater part of the law of succession and inheritance, natives of India still retain their personal law, either modified or formulated, to some extent, by Anglo-Indian legislation. Hindus retain their law of marriage, of adoption, of the joint family, of partition, of succession. Mahomedans retain their law of marriage, of testamentary and intestate succession, and of *wakf* or quasi-religious trusts. The important branch of law relating to the tenure of land, as embodied in the Rent and Revenue Acts and regulations of the different provinces, though based on Indian customs, exhibits a struggle and compromise between English and Indian principles.

Attempt to govern natives by native law, Englishmen by English law.

It will have been seen that the East India Company began by attempting to govern natives by native law, Englishmen by English law. This is the natural system to apply in a conquered country, or in a vassal State—that is to say, in a State where complete sovereignty has not been assumed by the dominant power. It is the system which involves the least disturbance. It is the system which was applied by the barbarian conquerors of the provinces of the Roman Empire, and which gave rise to the system of personal law that plays so large a part in the long history of the decay of that empire. It appears to be the system now in force in Tunis, where the French have practically established an exclusive protectorate, and where French law appears to be administered by French courts to Frenchmen and European foreigners, and Mahomedan law by Mahomedan courts to

[1] e. g. the Mahomedan rules as to the right of pre-emption, which are expressly recognized by the Punjab Laws Act, 1872 (as amended by Act XII of 1878), and by the Oudh Laws Act, 1876.

the natives of the country. It is the system which is applied, with important local variations, in the British protectorates established in different parts of the world over uncivilized or semi-civilized countries. The variations are important, because the extent to which native laws and usages can be recognized and enforced depends materially on the degree of civilization to which the vassal State has attained.

Causes of its failure.

The system broke down in India from various causes.

In the first place there was the difficulty of ascertaining the native law.

Warren Hastings did his best to remove this difficulty by procuring the translation or compilation of standard text-books, such as the Hedaya, the Sirajiyah, and the Sharifyah for Mahomedan law, the Code of Manu, the Mitakshara, and the Dayabhaga for Hindu law, and by enlisting the services of native law officers as assessors of the Company's courts. His regulations were based on the assumption that the natives of India could be roughly divided into Mahomedans and Gentus, and that there was a body of law applicable to these two classes respectively. But this simple and easy classification, as we now know, by no means corresponds to the facts. There are large classes who are neither Mahomedans nor Hindus. There are various schools of Mahomedan law. *There are Mahomedans whose rules of inheritance are based,* not on the Koran, but on Hindu or other non-Mahomedan usages. Hinduism is a term of the most indefinite import. Different text-books are recognized as authoritative in different parts of India and among different classes of Hindus. Even where they are so recognized, they often represent what the compiler thought the law ought to be rather than what it actually is or ever was. Local, tribal, caste, and family usages play a far larger part than had originally been supposed, and this important fact has been recognized in later Indian legislation.

Then, the native law, even where it could be ascertained, was defective. There were large and important branches of

law, such as the law of contract, for which it supplied insufficient guidance. Its defects had to be supplied by English judges and magistrates from their remembrance, often imperfect, of principles of English law, which were applied under the name of justice, equity, and good conscience.

And lastly, native law often embodied rules repugnant to the traditions and morality of the ruling race. An English magistrate could not enforce, an English Government could not recognize, the unregenerate criminal law of Indian Mahomedanism.

Thus native law was eaten into at every point by English case law, and by regulations of the Indian legislatures.

Hence the chaos described in the passage quoted above from the report of the Calcutta judges.

Reason for codification.

This chaos led up to the period of codification, which was ushered in by Macaulay's Commission of 1833, and which, after the lapse of many years, bore fruit in the Anglo-Indian codes.

In India, as elsewhere, codification has been brought about by the pressure of practical needs. On the continent of Europe the growth of the spirit of nationality, and the consequent strengthening of the central Government and fusion of petty sovereignties or half-sovereignties, has brought into strong relief the practical inconvenience arising from the co-existence of different systems of law in a single State. Hence the French codes, the Italian codes, and the German codes. If codification has lagged behind in England, it has been largely, perhaps mainly, because England acquired a strong central Government, and attained to practical unity of law, centuries before any continental State.[1]

Merits of Indian Codes.

In India it became necessary to draw up for the guidance of untrained judges and magistrates a set of rules which they could easily understand, and which were adapted to the circumstances of the country. There has been a tendency, on the one hand, to overpraise the formal merits of the

[1] See chap. viii of my *Legislative Methods and Forms*.

Indian codes, and on the other to underrate their practical utility as instruments of government. Their workmanship, judged by European standards, is often rough, but they are on the whole well adapted to the conditions which they were intended to meet. An attempt has been made to indicate in this chapter the extent to which they have supplanted or modified native law and custom.

How far codification applicable to native law.

It has often been suggested that the process of codification should be deliberately extended to native law, and that an attempt should be made, by means of codes, to define and simplify the leading rules of Hindu and Mahomedan law, without altering their substance. Sir Roland Wilson, in particular, has pleaded for the codification of Anglo-Mahomedan law. There is, however, reason to believe that he has much underrated the difficulties of such a task. Those difficulties arise, not merely from the tendency of codification to stereotype rules which, under the silent influence of social and political forces, are in process of change, but from the natural sensitiveness of Hindus and Mahomedans about legislative interference with matters closely touching their religious usages and observances, and from the impossibility in many cases of formulating rules in any shape which will meet with general acceptance. It is easy enough to find an enlightened Hindu or Mahomedan, like the late Sir Syed Ahmed Khan, who will testify to the general desire of the natives to have their laws codified. The difficulty begins when a particular code is presented in a concrete form. Even in the case of such a small community as the Khojas, who have contrived to combine adhesion to the Mahomedan creed with retention of certain Hindu customs, it has, up to this time, been found impossible to frame a set of rules of inheritance on which the leaders of the sect will agree. And any code not based on general agreement would either cause dangerous discontent or remain a dead letter. The misconceptions which arose about the Guardians and Wards Act, the authors of which expressly disavowed any intention of

altering native law, illustrate the sensitiveness which prevails about such matters.

Codes and text-books.

And what, after all, is a code? It is a text-book enacted by the legislature. Several of the Anglo-Indian codes extend only to particular provinces of British India. But, as clear and accurate statements of the law, they possess much authority in the provinces to which they have not been formally extended. Indeed, it was Sir Henry Maine's view that the proper mode of codifying for India was to apply a code in the first instance to a particular province, where its enactment would meet with no opposition, and gradually extend its operation after the country had become familiarized with its contents, and accepted it as a satisfactory statement of the law. When this stage had been reached, what had been used as a text-book might be converted into a law. Now, the author of a text-book enjoys many advantages over the legislators who enact a code. He can guard himself by expressions such as 'it is doubtful whether' and 'there is authority for holding.' And he can correct any error or omission without going to the legislature. If a digest such as Sir Roland Wilson's obtains general acceptance with the courts which have to administer Anglo-Mahomedan law, it will supply an excellent foundation for a future code of that law. But the time for framing such a code has not yet arrived.

CHAPTER V

BRITISH JURISDICTION IN NATIVE STATES

It seems desirable to consider, somewhat more fully than has been possible within the compass of the foregoing chapters, the powers of the Indian legislative, executive, and judicial authorities with respect to persons and things outside the territorial limits of British India, particularly in the territories of the Native States of India. For this purpose it may be convenient to examine, in the first instance, the principles applying to extra-territorial legislation in England, and then to consider what modifications those principles require in their application to India. This is the more important because the Indian Act regulating the exercise of extra-territorial jurisdiction was to a great extent copied from the English Act which had been passed for similar purposes.

Territorial character of Parliamentary legislation.

Parliamentary legislation is primarily territorial. An Act of Parliament prima facie applies to all persons and things within the United Kingdom, and not to any persons or things outside the United Kingdom.[1] In exercising its power to legislate for any part of the King's dominions Parliament is guided both by constitutional and by practical considerations. It does not legislate for a self-governing dominion, except on matters which are clearly Imperial in their nature, or are beyond the powers of the dominion legislature. And, apart from constitutional considerations, it is reluctant to deal with matters which are within the competence of a local legislature.

Principles limiting extra-territorial legislation.

In dealing with persons and things outside the King's dominions Parliament is always presumed to act in accordance with the rules and principles of international law, and its enactments are construed by the courts accordingly. It would be contrary to the received principles of international

[1] See *R.* v. *Jameson*, [1896] 2 Q. B. 425, 430.

law [1] regulating the relations between independent States for Parliament to pass a law punishing a foreigner for an offence committed on foreign territory, or setting up courts in foreign territory. It would not be contrary to those principles for Parliament to pass a law punishing a British subject for an offence committed in foreign territory, or giving English or other British courts jurisdiction in respect of offences so committed. But Parliament is reluctant, more reluctant than the legislatures of continental States, to legislate with respect to offences committed by British subjects in foreign territory. Its reluctance is based partly on the traditions and principles of English criminal law, as indicated by the averment that an offence is committed against the peace of the King, an expression inappropriate to foreign territory and by the rules as to venue and local juries; partly on the practical inconvenience of withdrawing offences from the cognizance of local courts to a court at a distance from the scene of the offence and from the region in which evidence is most readily obtainable. The difficulty about evidence is felt more strongly by British courts than by the courts of some other countries, where there is less reluctance to try offences on paper evidence.[2]

[1] i.e. *to the principles of international law as understood and recognized* by England and the United States. But continental States have asserted the right to punish foreigners for offences committed in foreign territories, especially for acts which attack the social existence of the State in question and endanger its security, and are not provided against by the penal law of the country in the territory of which they have taken place. Westlake, *International Law*, Part I, Peace, p. 251. And the principles of European international law cannot be applied, except with serious modifications, to States outside the European or Western family of nations.

[2] *See* Jenkyns's *British Rule and Jurisdiction*, p. 128. As to the principles on which different States have exercised their powers of punishing offences committed abroad, see Heffter, *Droit International (fourth French edition)*, p. 86, note G. Where an offender has escaped from the country in which the offence was committed he can often be handed over for trial under the Extradition Acts, 1870 to 1895, which apply as between British and foreign territory, or under the Fugitive Offenders Act, 1881, which applies as between different parts of the British dominions. Thus the procedure under these Acts often supplies a substitute for the exercise of extra-territorial jurisdiction.

These general principles appear to be consistent with the canons for the construction of statutes laid down in the Jameson case of 1896[1]:—

'It may be said generally that the area within which a statute is to operate, and the persons against whom it is to operate, are to be gathered from the language and purview of the particular statute. But there may be suggested some general rules—for instance, if there be nothing which points to a contrary intention, the statute will be taken to apply only to the United Kingdom. But whether it be confined in its operation to the United Kingdom, or whether, as is the case here,[2] it be applied to the whole of the Queen's dominions, it will be taken to apply to all the persons in the United Kingdom, or in the Queen's dominions as the case may be, including foreigners who during their residence there owe temporary allegiance to Her Majesty. And, according to its context, it may be taken to apply to the Queen's subjects everywhere, whether within the Queen's dominions or without. One other general canon of construction is this—that if any construction otherwise be possible, an Act will not be construed as applying to foreigners in respect to acts done by them outside the dominions of the sovereign power enacting. That is a rule based on international law, by which one sovereign power is bound to respect the subjects and the rights of all other sovereign powers outside its own territory.'

Cases in which Parliament legislates for offences committed out of British territory.

Under these circumstances the classes of cases in which Parliamentary legislation has given jurisdiction to British courts in respect of offences committed out of British territory are not numerous. The most important of them are as follows:—

(1) Offences committed at sea.

(2) Treason.

(3) Murder and manslaughter.

(4) Slave trade offences.

(5) Offences against the Explosive Substances Act, 1883.

(6) Offences, such as forgery and perjury, committed abroad with reference to proceedings in some British court.

(7) Bigamy.

(8) Offences against certain provisions of the Foreign Enlistment Act, 1870.

[1] *R.* v. *Jameson*, [1896] 2 Q. B. 425, 430, Judgement of Lord Russell, L. C. J., on demurrer to indictment.

[2] See 33 & 34 Vict. c. 90, s. 2.

Offences at sea.

(1) The exercise by English courts of jurisdiction in respect of offences committed on the high seas arises from the necessities of the case, i.e. from the absence of territorial jurisdiction. These offences, being committed outside the body of any English county, could not be dealt with by the ordinary criminal courts of the country, in the exercise of their ordinary criminal jurisdiction. They were originally dealt with by the court of the admiral, but are now, under various enactments, triable by ordinary courts of criminal jurisdiction as if committed within the local jurisdiction of those courts.[1]

The jurisdiction extends to offences committed on board a British ship, whether the ship is on the open sea or in foreign territorial waters below bridges, and whether the offender is or is not a British subject or a member of the crew, and although there may be concurrent jurisdiction in a foreign court.[2] The principle on which Parliament exercises legislative, and the courts judicial, powers, is that a British ship is to be treated as if it were an outlying piece of British territory.[3] Theoretically, Parliament might, without bringing itself into conflict with the rules of international law, legislate in every case in respect of an offence committed by a British subject on board a foreign ship when on the high seas. But it has abstained from doing so in cases where the British subject is a member of the crew of the foreign ship, because he may be treated as having accepted foreign law for the time, and because of the practical difficulties which would arise if members of the same crew were subject to two different laws in respect of the same offence.

The principles on which Parliament has exercised its legislative powers with respect to offences on board ship are

[1] See 4 & 5 Will. IV, c. 36, s. 22; 24 & 25 Vict. cc. 94 and 97; 57 & 58 Vict. c. 60, s. 684; and as to the Colonies, 12 & 13 Vict. c. 96.

[2] *R.* v. *Anderson*, L. R. 1 C. C. R. 161; *R.* v. *Carr*, 10 Q. B. D. 76. The rule is subject to modifications in the case of alien enemies, or aliens on board English ships against their will. See Stephen, *History of the Criminal Law*, ii. 4–8.

[3] The analogy is not complete. For instance, a British ship in foreign territorial waters is, or may be, subject to a double jurisdiction.

illustrated by ss. 686 and 687 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), which run as follows :—

'686.—(1) Where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas, or in any foreign port or harbour, or on board any foreign ship to which he does not belong, or, not being a British subject, is charged with having committed any offence on board any British ship on the high seas, and that person is found within the jurisdiction of any court in Her Majesty's dominions, which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that court shall have jurisdiction to try the offence as if it had been so committed.

12 & 13 Vict. c. 96. '(2) Nothing in this section shall affect the Admiralty Offences (Colonial) Act, 1849.

'687. All offences against property or person committed in or at any place either ashore or afloat out of Her Majesty's dominions by any master, seaman, or apprentice, who at the time when the offence was committed is, or within three months previously has been, employed in any British ship, shall be deemed to be offences of the same nature respectively, and be liable to the same punishment respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts and in the same places as if those offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England.'

Section 689 gives powers of arrest, &c., in cases where jurisdiction may be exercised under s. 687.

It will be observed that s. 686 draws a distinction between British subjects and others, and between British subjects who do, and those who do not, belong to a foreign ship. The terms in which s. 687 are expressed are very wide, and it is possible that English courts in construing them would limit their application with reference to the principles of international law. See the remarks in *R.* v. *Anderson*, where the case was decided independently of the enactment reproduced by this section.[1]

[1] Piracy by the law of nations, committed on the open sea, whether by a British subject or not, is triable by an English court under the criminal jurisdiction derived from the Admiralty. But this jurisdiction is *not* conferred by any special statute. As to what constitutes piracy *jure gentium*, see *Attorney-General for the Colony of Hong Kong* v. *Kwok-a-Sing*, L. R. 5 P. C. 179, 199 (1873), and Stephen, *History of the Criminal Law*, ii. 27.

(2) Treason committed abroad is triable in England under an Act of 1543–4 (35 Henry VIII, c. 2). Treason, if committed in the territory of a foreign State, may very possibly not be an offence against the law of that State, and therefore not be punishable by the courts of that State. Treason.

(3) Murder committed by a British subject in foreign territory was made triable in England under a special commission of oyer and terminer by an Act of Henry VIII (33 Henry VIII, c. 23). It was by a special commission under this Act that Governor Wall was, in 1802, tried and convicted of a murder committed in 1782.[1] The Act was extended by an Act of 1803 (43 Geo. III, c. 113, s. 6) to accessories before the fact and to manslaughter. Both these enactments were repealed by an Act of 1828 (9 Geo. IV, c. 31), which re-enacted their provisions with modifications as to procedure. The Act of 1828 was repealed and reproduced with modifications by an enactment in one of the consolidating Acts of 1861 (24 & 25 Vict. c. 100, s. 9), which is the existing law. **Murder and manslaughter.**

(4) Offences against the Slave Trade Acts are triable by English courts if committed by any person within the King's dominions or by any British subject elsewhere (see 5 Geo. IV, c. 114, ss. 9, 10). Slave trade offences.

(5) Offences against the Explosive Substances Act, 1883 (46 & 47 Vict. c. 3), i.e. offences by dynamiters, are triable by English courts when committed by any person in any part of the King's dominions or by any British subject elsewhere. Offences against Explosive Substances Act.

(6) Offences such as perjury and forgery are triable where the person charged is apprehended or in custody. See s. 8 of the Perjury Act, 1911 (3 & 4 Geo. V, c. 6) and s. 14 of the Forgery Act, 1913 (3 & 4 Geo. V, c. 27). Perjury and forgery.

(7) Under s. 57 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), bigamy is punishable in England or Ireland, whether the bigamous marriage has taken place in England or Ireland *or elsewhere*, but the section does not Bigamy.

[1] Stephen, *History of the Criminal Law*, ii. 2.

extend to any second marriage contracted elsewhere than in England or Ireland by any other than a subject of His Majesty.

Foreign Enlistment Act.

(8) The Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), is declared by s. 2 to extend to all the dominions of His Majesty, including the adjacent territorial waters, and some of its provisions, e.g. ss. 4, 7, extend to offences committed by any person being a British subject within or without His Majesty's dominions. The construction and operation of this Act were commented on in the case of *R.* v. *Jameson*, [1896] 2 Q. B. 425.

Classes of British subjects.

British subjects in the proper sense are of two classes :—

(1) Natural-born British subjects ; and

(2) Naturalized British subjects.

Every person born within the King's dominions, whether of British or of foreign parents, is a natural-born British subject, unless he has renounced his British nationality in manner provided by s. 4 of the Naturalization Act, 1870 (33 & 34 Vict. c. 14).

Persons born out of the King's dominions whose fathers or grandfathers in the male line were natural-born British subjects are also by Act of Parliament [1] natural-born British subjects, subject to certain exceptions and qualifications, unless they have renounced their British nationality in manner provided by law.

Naturalized British subjects may have become so either by virtue of the imperial Naturalization Act of 1870, or by virtue of the law of a British possession. The rights of aliens naturalized under the imperial Act are not expressed by the Act to extend beyond the United Kingdom (s. 7). Naturalization by virtue of the law of a British possession does not operate beyond the limits of that possession. But it would seem that the holders of certificates of naturalization granted either under the imperial or under a colonial Act.

[1] 25 Edw. III, stat. 2 ; 7 Anne, c. 5, s. 3 ; 4 Geo. II, c. 21 ; 13 Geo. III, c. 21.

are entitled to claim British protection in all foreign countries other than their country of origin.[1]

The rights of an alien to whom a certificate of naturalization is granted under the Act of 1870 are subject to the qualification that he is not, when within the limits of the foreign State of which he was the subject previously to obtaining his certificate of naturalization, to be deemed to be a British subject, unless he has ceased to be a subject of that State in pursuance of the laws thereof, or of a treaty to that effect (33 & 34 Vict. c. 14, s. 7).

A child born abroad of a father or mother (being a widow) who has obtained a certificate of naturalization in the United Kingdom is, if during infancy he becomes resident with the parent in the United Kingdom, to be deemed a naturalized British subject (see 33 & 34 Vict. c. 34, s. 10 (5)).

In many of these cases there may be a double nationality. This is specially apt to occur in the case of the children or grandchildren, born abroad, of British subjects. The Acts which gave such persons the status of British subjects were passed for a special purpose, are apt to cause conflicts of law, and are not always suitable to Oriental circumstances. Enactments of this kind ought, it may reasonably be argued, to be construed *secundum materiam*. It appears to have been held at one time that the expression 'natural-born subjects' is, in the statutes affecting India, always taken to mean European British subjects,[2] and, although this position can no longer be maintained in its entirety (see, e.g., 21 & 22 Vict. c. 106, s. 32), there is ground for argument that it may be construed subject to restrictions in its application to descendants of non-European subjects of the Crown.

[1] For a discussion of the difficult questions which have been raised as to the effect of the statutory provisions under which certificates of naturalization are granted, and particularly as to the construction of s. 7 of the Naturalization Act, 1870, see the Report of the Interdepartmental Committee on the Naturalization Laws, 1901; Cd. 723. The Act of 1870 is now superseded by the British Nationality and Status of Aliens Act, 1914. Naturalization of aliens in India is provided for by Act XXX of 1852, which must be read with reference to the later imperial Acts.

[2] See Minutes by Sir H. S. Maine, No. 97.

Conclusions as to Parliamentary legislation for extra-territorial offences.

The conclusions to be drawn from the enactments and the reported decisions appear to be—

(1) It would not be consistent with the principles of international law regulating the relations between independent civilized States [1] for English courts to exercise, or for Parliament to confer, jurisdiction in respect of offences committed by foreigners in foreign territory. 'I am not aware,' says the late Mr. Justice Stephen, 'of any exception to the rule that crimes committed on land by foreigners out of the United Kingdom are not subject to the criminal law of England, except one furnished by the Merchant Shipping Act of 1854 (17 & 18 Vict. c. 104, s. 267). There may be exceptions in the orders made under the Foreign Jurisdiction Acts.' [2]

(2) English courts are unwilling to exercise, and Parliament is unwilling to confer, jurisdiction in respect of offences committed by British subjects in foreign territory, except in special classes of cases.

With respect to offences committed in British territory and abetted in foreign territory, or vice versa, it is difficult to lay down any general proposition which does not require numerous qualifications.

In the case of felonies committed in England or Ireland and aided in foreign territory, the law is settled by the Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94, s. 7), which enacts that where any felony has been completely committed in England or Ireland, the offence of any person who has been an accessory, either before or after the fact, to the felony, may be dealt with, inquired of, tried, determined, and punished by any court which has jurisdiction to try the principal felony, or any felonies committed in any

[1] But see the qualifying note above, p. 373.

[2] *History of the Criminal Law*, ii. 12. Section 267 of the Act of 1854 is now represented by s. 687 of the Act of 1894 noticed above. As to the orders under the Foreign Jurisdiction Acts, see below, p. 383. There may also be an exception in the case of a breach of duty to the Crown committed abroad by a foreign servant of the Crown.

county or place in which the act by reason whereof that person has become accessory has been committed; and in any other case the offence of an accessory to a felony may be dealt with, inquired of, tried, determined, and punished by any court which has jurisdiction to try the principal felony or any felonies committed in any county or place in which the person being accessory is apprehended, or is in custody, whether the principal felony has been committed on the sea or on the land, or begun on the sea or completed on the land, or begun on the land or completed on the sea, and whether within His Majesty's dominions, or without, or partly within His Majesty's dominions, and partly without. But there is no similar comprehensive enactment with respect to misdemeanours, and it is obvious that different considerations would apply in the case of such breaches of statutory regulations as are not necessarily offences by the law of another country.

As to offences committed in foreign territory and instigated or aided in England, questions of great importance and delicacy have arisen. These questions were raised in the famous case of *R.* v. *Bernard*,[1] and are touched on by the late Mr. Justice Stephen in his *History of the Criminal Law*. His conclusion is that, 'whatever may be the merits of the case legally, it seems to be clear that the legislature ought to remove all doubt about it by putting crimes committed abroad on the same footing as crimes committed in England, as regards incitement, conspiracy, and accessories in England. Exceptions might be made as to political offences, though I should be sorry if they were made wide.'[2] The English legislature has, however, never gone so far as to adopt these conclusions in general terms, though it has declared the law in particular cases. Thus, with respect to murder and manslaughter, the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100, ss. 4, 9), has enacted in substance that persons who conspire in England to murder foreigners abroad,

[1] Foster and Finlason, 240 (1858); 8 State Trials, N. S., 887.
[2] Vol ii, p. 14.

or in England incite people to commit murder abroad, or become in England accessories, whether before or after the fact, to murder or manslaughter committed abroad, shall be in the same position in every respect as if the crime committed abroad had been committed in England.

As to theft, it was decided in 1861,[1] on a question which arose under an Act of 1827 (7 & 8 Geo. IV, c. 29), that where goods are stolen abroad, *e.g.* in Guernsey, there could not be a conviction for receiving the goods in England, and this decision was considered applicable to cases under the Larceny Act, 1861 (24 & 25 Vict. c. 96), by which the Act of 1827 was replaced. This loophole in the criminal law has now been stopped by the Larceny Act, 1896 (59 & 60 Vict. c. 52), which punishes receipt in the United Kingdom of property stolen outside the United Kingdom. A similar question arose at Bombay in 1881[2] on the construction of ss. 410 and 411 of the Indian Penal Code; and it was held by the majority of the Court that certain bills of exchange stolen at Mauritius, where the Indian Penal Code was not in force, could not be regarded as stolen property within the meaning of s. 410 so as to make the person receiving them at Bombay liable under s. 411. In order to meet this decision, Act VIII of 1882 amended the definition of stolen property in s. 410 of the Penal Code by adding the words, 'whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India.' The arguments and judgements in the Bombay case deserve study with reference not merely to the existing state of the law, but to the principles on which legislation should proceed. Legislation with respect to offences committed in foreign territory and instigated or aided in British territory always requires careful consideration, especially in its application to foreigners, and with reference to minor offences, which may be innocent acts under the foreign law.

[1] *Reg.* v. *Debruiel*, 11 Cox C. C. 207.
[2] *Empress* v. *S. Moorga Chetty*, I. L. R. 5 Bom. 338.

Foreign Jurisdiction Acts

Under the Orders in Council made in pursuance of the successive Foreign Jurisdiction Acts British courts have been established and British jurisdiction is exercised in numerous foreign territories in respect not only of British subjects, but of foreigners, i.e. in cases to which Parliamentary legislation would not ordinarily extend. But this jurisdiction, though recognized, confirmed, supported, and regulated by Acts of Parliament, derives its authority ultimately, not from Parliament, but from powers inherent in the Crown or conceded to the Crown by a foreign State.[1]

Origins of consular jurisdiction. The capitulations.

The jurisdiction arose historically out of the arrangements which have been made at various times between the Western Powers and the rulers of Constantinople. These arrangements date from a period long before the capture of Constantinople by the Turks. As far back as the ninth and tenth centuries the Greek Emperors of Constantinople granted to the Warings or Varangians from Scandinavia capitulations or rights of extra-territoriality, which gave them permission to own wharves, carry on trade, and govern themselves in the Eastern capital. The Venetians obtained similar capitulations in the eleventh century, the Amalfians in 1056, the Genoese in 1098, and the Pisans in 1110, and thenceforward they became extremely general. When the Turks took Constantinople they did little to interfere with the existing order of things, and the Genoese and Venetian capitulations were renewed.[2] The first of what may be called the modern capitulations was embodied in the Treaty of February, $153\frac{5}{6}$, between Francis I of France and Soliman the Magnificent.

[1] The first and most important section of the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), is in form a declaration as well as an enactment. Section 2 is in form an enactment only, and possibly the difference was intentional.

[2] See the Introduction by J. Theodore Bent to *Early Voyages and Travels in the Levant*, pp. ii, iii—Publications of the Hakluyt Society. Mr. Rashdall has drawn an interesting parallel between the self-governing communities of foreign merchants in Oriental countries and the self-governing communities of foreign students which, at Bologna and elsewhere, were eventually developed into Universities (*Universities of Europe in the Middle Ages*, i. 153). As to the jurisdiction over students at Bologna, see ibid. pp. 178 sqq.

This treaty, although, as has been seen, it embodied no new principle, yet from another point of view marked a new and important departure in international law, if and so far as international law can be said to have existed at the beginning of the sixteenth century. The modern capitulations negatived the theory that the 'infidel' was the natural and necessary enemy of a Christian State, and admitted the Mahomedan State of Turkey for limited purposes into the family of European Christian States. At the same time they recognized the broad differences between Christian and Mahomedan institutions, habits, and feelings by insisting on the withdrawal from the jurisdiction of the local courts of Christian foreigners who resorted to Turkish territory for the purposes of trade, and by establishing officers and courts with jurisdiction over disputes between such foreigners.

The principles on which separate laws and a separate jurisdiction have been at times different and in different countries claimed on behalf of Western foreigners trading to the East were enunciated, many generations afterwards, by Lord Stowell in a passage which has become classical :—

'It is contended on this point that the King of Great Britain does not hold the British possessions in the East Indies in right of sovereignty, and therefore that the character of British merchants does not necessarily attach on foreigners locally resident there. But taking it that such a paramount sovereignty on the part of the Mogul princes really and solidly exists, and that Great Britain cannot be deemed to possess a sovereign right there; still it is to be remembered that wherever even a mere factory is founded in the eastern parts of the world, European persons trading under the shelter and protection of those establishments are conceived to take their national character from that association under which they live and carry on their commerce. It is a rule of the law of nations, applying practically to those countries, and is different from what prevails ordinarily in Europe and the western parts of the world, in which men take their present national character from the general character of the country in which they are resident. And this distinction arises from the nature and habit of the countries. In the western parts of the world alien merchants mix in the society of the natives; access and intermixture are permitted; and they become incorporated to almost the full extent. But in the East, from the oldest times, an immiscible character has been kept up; foreigners are not admitted into the general body and mass of the society of the nation;

they continue strangers and sojourners as their fathers were—*Doris amara suam non intermiscuit undam.* Not acquiring any national character under the general sovereignty of the country, and not trading under any recognized authority of their own original country, they have been held to derive their present character from that of the association or factory under whose protection they live and carry on their trade.'[1]

The Levant Company.

The first of the capitulations granted to England bears date in the year 1579,[2] and two years afterwards, in 1581, Queen Elizabeth established the Levant Company for the purpose of carrying on trade with the countries under the Ottoman Porte. In 1605 the company obtained a new charter from James I, and this charter, as confirmed by Charles II, recognized by various Acts of Parliament, and supplemented by usage, constituted the basis of the British consular jurisdiction in the East until the abolition of the Levant Company in 1825.[3]

By the charter of King James, as confirmed by the charter of King Charles, the company was invested with exclusive privileges of trade in great part of the Levant and Mediterranean seas, and with a general power of making by-laws and appointing consuls with judicial functions in all the regions so designated.

The charter of King James was altogether in the nature of a prerogative grant from home, and was not founded on

[1] *The Indian Chief*, (1800) 3 Robinson, Adm. Rep. p. 28. See also the remarks of Dr. Lushington in the case of the *Laconia*, (1863) 2 Moo. P. C., N. S., p. 183.

[2] The capitulations with England now in force were confirmed by the Treaty of the Dardanelles in 1809, and are to be found in Hertslet's *Treaties*, ii. 346, and in Aitchison's *Treaties*, third edition, vol. xi, Appendix I.

[3] The statements in the following paragraphs, as to the jurisdiction exercised by the officers of the Levant Company, are derived partly from a memorandum written for the Foreign Office by the late Mr. Hope Scott (then Mr. J. R. Hope), by whom the Foreign Jurisdiction Act, 1843, was drawn. [This memorandum, which at the date of the first edition of this book had not been published, is now printed as Appendix VI to Sir Henry Jenkyns's *British Rule and Jurisdiction beyond the Seas.*] See also the case of *The Laconia; Papayanni* v. *The Russian Steam Navigation Company*, 2 Moo. P. C., N. S., 161. As to the history of the Levant Company, see Mr. Bent's *Introduction to Early Voyages and Travels in the Levant*, noticed above, and the article on 'Chartered Companies' in the *Encyclopaedia of the Laws of England*.

any recital of concessions made by the various sovereigns in whose dominions it was to take effect. It did not expressly refer to any such concessions as the basis of a power to withdraw British subjects from the foreign tribunals, and such a power was apparently assumed even in cases in which those tribunals might, according to the local law, supply the legitimate forum. The charter merely provided that there should be no infraction of treaties.

The main strength of the coercive jurisdiction given by the charter appears, in Turkey at least, to have depended, on the one hand, upon the corporate character of the company and the power which it thus had over its own members, and, on the other hand, upon its exclusive privileges of trade which enabled it to prevent the influx of disorderly merchants and seamen.

The charter did not contemplate the exercise of any criminal jurisdiction properly so called, nor any of a civil character in mixed suits. These branches of the consular jurisdiction in the East are probably of gradual acquisition, and perhaps were not claimed at the time when King James and King Charles granted their charters.

Dissolution of Levant Company.

The jurisdiction conceded by the Sublime Porte was exercised mainly[1] by officers called consuls[2], who were appointed by the Levant Company, and whose procedure was regulated by by-laws of the Company made under powers very like those granted to the East India Company.

The Levant Company, with its exclusive privileges of trading and its indefinite legislative and judicial powers, closely resembled the East India Company; and the legal

[1] The jurisdiction was exercised also by the ambassador, who was *appointed by the Crown, but was until 1803 nominated and paid by the* Levant Company. He continued to be chief judge of the consular court down to 1857.

[2] Of course the use of the word 'consul' is of much older date; *see* Murray's Dictionary, and Du Cange, s. v., and the Report of the Select Committee of the House of Commons on Consular Establishments, 1835. As to the French consuls in the Levant during and before the seventeenth century, see Masson, *Hist. du Commerce Français dans le Levant*, p. xiv.

difficulties which arose when the East India Company extended the exercise of its legislative powers beyond the staff of its factories illustrate the technical difficulties which arose or might have arisen under the jurisdiction exercised by the consular officers of the Levant Company. But, as the East India Company grew, the Levant Company dwindled, and in 1825 it was formally dissolved. The Act which provided for its dissolution (6 Geo. IV, c. 33) enacted that thereafter all such rights and duties of jurisdiction and authority over His Majesty's subjects resorting to the ports of the Levant for the purposes of trade or otherwise as were lawfully exercised or performed, or which the various charters or Acts, or any of them, authorized to be exercised and performed, by any consuls or other officers appointed by the Company, or which such consuls or other officers lawfully exercised and performed under and by virtue of any power or authority whatever, should be vested in and exercised and performed by such consuls and other officers as His Majesty might be pleased to appoint for the protection of the trade of His Majesty's subjects in the ports and places mentioned in the charters and Acts.

Difficulties arising from dissolution of Levant Company

The intention of the Act, doubtless, was to transfer to the consular officers appointed by the Crown all the powers formerly vested in the consular officers appointed by the Levant Company. But it soon appeared that the dissolution of the Company materially increased the difficulty of the task imposed on the consuls. The authority which had previously supported them was gone, and the prescriptive respect which might formerly have attached to the powers conferred by the charter was disturbed by the necessity which had now arisen of testing those powers by the recognized principles of the English constitution.

In 1826 the law officers of the Crown threw doubts on the legality of the general powers of fine and imprisonment, and of the power which had previously been held to be vested in the consuls of sending back British subjects in certain

cases to this country, and thus the coercive character of the jurisdiction was greatly shaken.

Moreover, the Act of George IV had made no provision in lieu of the Company's power of framing by-laws, and no method had been devised for meeting the difficulties arising out of a strict adherence to English jurisprudence and out of deviations from it by the consular tribunals.

And, lastly, the criminal and international jurisdiction had gradually assumed a form which the new state of affairs rendered in the highest degree important, but the exercise of which transcended such authority as the Company's consuls might previously have claimed.

In 1836, eleven years after the dissolution of the Levant Company, an Act (6 & 7 Will. IV, c. 78) was passed to meet these difficulties. It recited that by the treaties and capitulations subsisting between His Majesty and the Sublime Porte full and entire jurisdiction and control over British subjects within the Ottoman dominions in matters in which such British subjects are exclusively concerned was given to the British ambassadors and consuls appointed to reside within the said dominions, and that it was expedient for the protection of British subjects within the dominions of the Sublime Porte in Europe, Asia, and Africa, and likewise in the States of Barbary, as well as for the protection of His Majesty's ambassadors, consuls, or other officers appointed or to be appointed by His Majesty for the protection of the trade of His Majesty's subjects in the said ports and places, that provision should be made for defining and establishing the authority of the said ambassadors, consuls, or other officers. And it went on to enact that His Majesty might by Orders in Council issue directions to His Majesty's consuls and other officers touching their rights and duties in the protection of his subjects residing in or resorting to the ports and places mentioned, and also directions for their guidance in the settlement of differences between subjects of His Majesty and subjects of any other Christian Power in the dominions of the Sublime Porte.

The Act of 1830 was a complete failure, and remained a dead letter. Its language and machinery were in many respects defective and open to objection.

Failure of Act of 1836; its causes.

British extra-territorial jurisdiction in the Levant was derived from two main sources: the authority of the Sublime Porte and the authority of the Crown of England. The charters of James and Charles ignored one of these sources, and used language which seemed to treat the jurisdiction exercised by the consular officers of the Levant Company as resting exclusively on the prerogative of the Crown. The language of the Act of 1825 was sufficiently general to include, and was perhaps intended to include, authority derived from the Porte and from the consent of other European Powers, but the Act makes no specific reference to either of these sources. The Act of 1836 erred in the opposite direction. Its language was so framed as to countenance the theory, always disavowed by the English Government, that British ambassadors and consuls were in respect of their jurisdiction delegates of the Porte, instead of being officers of the Crown exercising powers conceded to the Crown by the Porte.

Again, the preamble, by referring specifically to the capitulations, and to cases in which British subjects were exclusively concerned, tended to discredit those important parts of the jurisdiction which had arisen from usage or which related to cases affecting foreign subjects under the protection of Great Britain.

Usage had played an important part in the development of British jurisdiction in the Levant. At the outset that jurisdiction, as has been seen, did not include criminal jurisdiction, properly so called, nor civil jurisdiction in suits of a mixed character. But by 1836 the subject-matter of this jurisdiction appears[1] to have included, either generally and constantly or in some places and occasionally—

(1) Crimes and offences of whatever kind committed by British subjects;

(2) Civil proceedings where all parties were British subjects;

[1] According to Mr. Hope Scott.

(3) Civil proceedings where the defendant was a British subject and the plaintiff a subject of the Porte; and

(4) Civil proceedings where the defendant was a British subject and the plaintiff subject to another European Power.

And the exercise of this jurisdiction might be claimed, not only on behalf of British subjects, but equally on behalf of subjects of other Powers navigating under the flag, or claiming the protection, of Great Britain. It must be borne in mind that the Ionian Islands were at that time under the protection of the British Government, and that cases in which Ionian islanders were concerned were apt to come before the consular courts at Constantinople and elsewhere in the Levant. But, besides the Ionian islanders, there was a motley crew of persons of different nationalities, hangers-on of the embassy and others, who for reasons more or less legitimate claimed British protection. This was the origin of the class of protected persons referred to in modern Orders in Council under the Foreign Jurisdiction Acts.[1]

Lastly, the Act was so vaguely worded as to leave great room for doubt as to the powers conferred by it on the Crown, and particularly as to how far the Crown could in accordance with it exercise powers of legislation. This was a matter of the greatest moment. Under the capitulations the 'custom' of the English was to be observed on the decision of any suit or other difference or dispute amongst the English themselves. And in proceedings between English and Europeans the *forum rei* was customarily allowed to entail the application of English law to an English defendant, but a strict adherence to English jurisprudence had never been observed. The law to be administered was so vague and uncertain that a power to declare and modify it had become imperatively necessary.

Foreign Jurisdiction Act of 1843.

The Act of 1836 was repealed and superseded by the Foreign Jurisdiction Act of 1843 (6 & 7 Vict. c. 94). This

[1] It is well known how scandalously the privilege of claiming foreign protection has been abused in places like Tangier. As to the restrictions placed on this privilege in Turkey see Young, *Corps de Droit Ottoman*, ii 230.

Act, the provisions of which are now embodied in the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), was as conspicuous a success as its predecessor was a conspicuous failure. Its merits were that its recitals were sufficiently comprehensive to cover all possible sources of extra-territorial jurisdiction, and that its enacting words embodied a formula of great simplicity, and yet sufficiently elastic to cover all modes in which extra-territorial jurisdiction need be exercised. The theory on which the Act proceeded was that, in places beyond the Queen's dominions where the Queen had jurisdiction, she ought, with respect to the persons under that jurisdiction, to be in the same position as that which she occupies in a territory acquired by conquest or cession, that is to say, ought to have full power of legislating by Order in Council. The Act recited (as the Act of 1890 now recites) that by treaty, capitulation, grant, usage, sufferance, and other lawful means Her Majesty hath power and jurisdiction within divers countries and places out of Her Majesty's dominions, and that doubts have arisen how far the exercise of such power and jurisdiction is controlled by and dependent on the law and customs of this realm, and it is expedient that such doubts should be removed. It then declared and enacted, in terms reproduced by the Act of 1890, that 'it is and shall be lawful for Her Majesty to hold, exercise, and enjoy any power or jurisdiction which Her Majesty now hath, or may at any time hereafter have, within any country or place out of Her Majesty's dominions in the same and as ample a manner as if Her Majesty had acquired such power or jurisdiction by the cession or conquest of territory.'

To illustrate the effect of this enactment by a concrete instance, the King has, with respect to the jurisdiction exercisable by him at Shanghai, a place within the territorial limits of the empire of China, the same power as he has in Hong Kong, a British Crown colony outside the territorial limits of China and acquired by cession.

Under the Foreign Jurisdiction Act of 1843, and the various

Law framed and administered under Foreign Jurisdiction Acts.

enactments which have been passed for amending and extending it, and which are now embodied in the Consolidation Act of 1890, consular and other judicial officers have been established in all parts of the world where the sovereign Power is non-Christian, and extensive codes of law have been framed for their guidance.[1] In most cases the law adopted has been the English law, with the necessary modifications and simplifications; but at Zanzibar, which is much resorted to by natives of India, and from officers at which place an appeal is given to the High Court of Bombay, the law applied is the law of British India.[2] A similar course was adopted in the Persian Coast and Islands Order in Council, 1889.[3]

Three stages in history of Acts.

Three stages may be traced in the history of the Foreign Jurisdiction Acts.

First stage: application to States under regular Governments.

During the first stage they were applied exclusively to territories under regular Governments to whom consular officers were accredited, and where consular jurisdiction was exercised concurrently by the officers of other European States. Practically they were only applied to non-Christian countries, such as Turkey, Persia, and China. 'Such countries,' as Mr. Westlake has observed,[4] 'have civilizations differing from European, and, so far as they are not Mahomedan, from those of one another. The Europeans or Americans in them form classes apart, and would not feel safe under the local administration of justice which, even were they assured of its integrity, could not have the machinery necessary for giving adequate protection to the unfamiliar interests arising out of a foreign civilization. They were therefore placed under the jurisdiction of the consuls of their respective States, pursuant to conventions entered into by the latter with the local Governments.'

Turkey was the first country to which the Foreign Juris-

[1] See the Orders in Council printed in vol. v of the *Statutory Rules and Orders Revised*.

[2] See the Zanzibar Order in Council, 1897. *Stat. R. and O. Rev.* v. 87.

[3] *Stat. R. and O. Rev.* v. 667.

[4] *Chapters on Principles of International Law*, p. 102.

diction Acts were applied, and the jurisdiction exercised by British authorities in Turkey is now regulated by the Ottoman Order in Council, 1899,[1] which extends to all the dominions of the Ottoman Porte, including Egypt.

Anomalous position of Egypt.

The Anglo-French Convention of 1904 virtually recognized the predominant position of the British Government in Egypt, but Egypt has not become a British protectorate, as Tunis has become a French protectorate, and consequently Egypt is still subject to the régime of the Capitulations. The evils arising out of that régime were forcibly described by Lord Cromer in his reports on Egypt for the years 1904 and 1905.[2] Egypt, he remarked, stands in the unique position of an Oriental country which has assimilated a very considerable portion of European civilization, and which is mainly governed by European methods, but which at the same time possesses no machinery for general legislation, such as is possessed by the various states which, in judicial and administrative matters, it is taking as its model. At present no change can be made in any law applicable to Europeans without the unanimous consent of nearly all the Powers of Europe and the United States of America, and experience shows that it is practically impossible to obtain this consent even in matters of minor importance. So long as legislation was conducted by diplomacy, and so long as fifteen separate Powers each possessed the right of *liberum veto* on each new legislative proposal, he regarded any attempt to introduce the reforms, of which the country stands so much in need, as practically hopeless. The remedy which he suggested was the creation of a special legislative body, representative of European foreigners in Egypt, and capable of making laws to bind them.[3]

[1] *Stat. R. and O. Rev.* vol. v, p. 742. When Tunis became a French protectorate it was excluded from the operation of the Ottoman Order in Council then in force. As to the consular courts and jurisdiction in Turkey see Young, *Corps de Droit Ottoman*, i. 279.

[2] Egypt, No. 1 (1905), Cd. 2409; Egypt, No. 1 (1906), Cd. 2817.

[3] The capitulations do not apply to the Soudan, which is practically a British protectorate.

Second stage: application to barbarous countries.

After the Foreign Jurisdiction Act had been applied to countries like Turkey, it became necessary to extend the system of foreign jurisdiction to barbarous countries not under any settled government. By an Act of 1861 (24 & 25 Vict. c. 31)[1] the colonial authorities of Sierra Leone were empowered to exercise jurisdiction in the uncivilized territories adjoining that colony. And by an Act of 1863 (26 & 27 Vict. c. 35)[1] similar provision was made with respect to territories adjoining the Cape Colony. A more important departure in this stage was marked by the passing of the Pacific Islanders Protection Act of 1875 (38 & 39 Vict. c. 51). By this Act Her Majesty was empowered to create by Order in Council a court of justice with civil, criminal, and admiralty jurisdiction over Her Majesty's subjects within certain islands and places in the Western Pacific, with power to take cognizance of all crimes and offences committed by Her Majesty's subjects within any of those islands and places. Three years later power was given in more general terms to bring places not within the dominions of any settled government under the operation of the Foreign Jurisdiction Acts. By s. 5 of the Foreign Jurisdiction Act, 1878 (41 & 42 Vict. c. 67), now reproduced by s. 2 of the Foreign Jurisdiction Act, 1890, it was enacted that in any country or place out of Her Majesty's dominions in or to which any of Her Majesty's subjects were for the time being resident or resorting, and which was not subject to any Government from whom Her Majesty might obtain power and jurisdiction by treaty, or any of the other means mentioned in the Foreign Jurisdiction Act, 1843, Her Majesty should, by virtue of the Act, have power and jurisdiction over Her Majesty's subjects[2] for the time being resident in or resorting to that country or place, and the same should be deemed to be power and jurisdiction

[1] This Act is still in force, but may be revoked or varied by an Order in Council under the Foreign Jurisdiction Act, 1890 (see 53 & 54 Vict. c. 37, s. 17).

[2] Note that the jurisdiction under these enactments is expressly confined to British subjects.

had by Her Majesty therein within the Foreign Jurisdiction Act, 1843.

Third stage: application to protectorates.

An important stage was reached when the Foreign Jurisdiction Acts were applied to protectorates. In territories to which the Pacific Islanders Protection Act applies, such as Samoa, British officers and French or German officers may be exercising jurisdiction side by side. But in their third stage the Foreign Jurisdiction Acts have been applied to certain territories in Africa which are under the exclusive protectorate of England in this sense, that their chiefs are debarred from entertaining diplomatic relations with any other European Power, and that consequently such extra-territorial jurisdiction as is exercised within the territories is monopolized by officers of the British Government instead of being exercised by them concurrently with officers of other European States.

Recognition of African protectorates by Berlin Conference.

The term 'protectorate' acquired international recognition in the proceedings of the Berlin Conference of 1885, when it was stipulated (by Art. 34 of the Acte Général) that any Power *which might thereafter either acquire possession of* or assume a protectorate over, any territory on the coast of Africa, should notify the same to the other signatory Powers, in order to give them an opportunity of putting forward any claim to which they might conceive themselves entitled. This stipulation did not apply to annexations or protectorates in the interior.[1]

Charter to German Colonization Society.

Immediately after the signature of the general Act of Berlin, the Emperor William granted to the German Colonization Society in East Africa a charter of protection, in which he spoke of territories which by certain traders had been ceded to him for the German Colonization Society, with 'territorial superiority,'[2] and granted to the Society, on

[1] The general Act of Berlin is to be found in Hertslet, *Map of Africa by Treaty*, i. 20. There are several references to protectorates in other articles of the Act of Berlin, and also in the subsequent Brussels Act with respect to the African Slave Trade, Hertslet, i. 48.

[2] The word used in the charter is 'Landeshoheit,' and is translated in Hertslet's *Map of Africa by Treaty* as 'sovereign rights.'

certain conditions, the authority to exercise all rights arising from their treaties, including that of jurisdiction over both the natives and the subjects of Germany and of other nations established in those territories, or sojourning there for commercial or other purposes.[1]

Questions as to effect of German charter.

As to the legal and international effects of this charter and of the later imperial Act of April, 1886, by which the charter has apparently been superseded, many questions have been raised by writers on international law both in this country and on the Continent.[2] Have the territories to which they apply become German territory in a sense which imports all the rights and responsibilities of territorial sovereignty? Or are they merely subject to a German protectorate, implying a lesser degree of sovereignty and responsibility?

In considering these questions it must be borne in mind that Germany had in 1886 practically no colonial experience. England, with her vast system of colonies and dependencies, and with her factories and mercantile establishments in every part of the world, is familiar with the several distinctions for legislative, judicial, and executive purposes between the British dominions as a whole and the places outside the British dominions in which British jurisdiction is exercised; between the United Kingdom and the colonies and dependencies which, with the United Kingdom, make up the British Empire, and are sometimes described collectively in Acts of Parliament as British possessions; and lastly, between the several classes of British possessions; and with the mode in which, extent to which, and conditions under which imperial authority may be exercised in places belonging to each of these categories. Germany, when the present empire was formed, had no colonies, and few important mercantile settlements in foreign countries, and the constitution of the empire contained no provision for the mode in which authority was

[1] Hertslet, *Map of Africa by Treaty*, i. 303.

[2] See, e.g., Hall *Foreign Jurisdiction of the British Crown*, part iii, chap. 3; Westlake, *Chapters on the Principles of International Law*, p. 177; Despagnet; *Essai sur les Protectorats*, chap. iii.

to be exercised in any possessions or colonies which might subsequently be acquired. Hence the antithesis which was most present to the minds of German statesmen and jurists was that between their home or European territories—the *Reichsgebiet* proper—and their new acquisitions beyond the seas; and the tendency was to distinguish these latter by the collective name of protected territory, or '*Schutzgebiet*.' It was not unnatural that this appellation should appear inconveniently indefinite, and that more precise information should have been desiderated as to the category in which these territories ought to be placed; as to whether they were or were not to be treated, for international purposes, as German territory; as to whether the natives were or were not German subjects; and generally as to the nature and extent of the rights claimed and responsibilities assumed by the German sovereign within these regions. African protectorates are still in a transitional and experimental stage, and it is not always easy to give a precise answer to questions of this kind. The German Protectorate in East Africa, with its double government by the Imperial Crown and by a chartered company, was a political experiment resembling in its nature, and perhaps consciously modelled on, the earlier form of British rule in India. The vagueness of language of the German charter and Act finds a close parallel in the vagueness of language of the English Regulating Act of 1773, and this vagueness is probably attributable in each case to the same causes. As Sir James Stephen has remarked,[1] the authors of the Regulating Act 'wished that the King of England should act as the sovereign of Bengal, but they did not wish to proclaim him to be so.'

Questions as to English protectorates in Africa.

The questions which were raised with reference to the German protectorate claimed in 1885 may be raised, and have been raised, with reference to the English protectorates established in various parts of Africa over regions occupied by uncivilized tribes. The term '*protectorate*,' it has been

[1] *Nuncomar and Impey*, ii. 129.

observed, implies a protecting State and a protected State. How can it be applied to uncivilized regions where there is no organized State to protect? In what respects does a protectorate of this kind, where all the effective powers of sovereignty are exercised by the protecting State, differ from territorial sovereignty?[1] The tenuity of the distinction between a protectorate of this kind and territorial sovereignty was well illustrated by the Jameson case of 1896. In that case the expedition started from two points, one of which, Mafeking, was within the boundaries of the Cape Colony, and therefore clearly within British territory, whilst the other, Pitsani Pitslogo, was within the Bechuanaland Protectorate. The Lord Chief Justice, in charging the jury,[2] intimated clearly that in his opinion the latter of these places, as well as the former, must, at all events for the purposes of the Act under which the indictment was framed (the Foreign Enlistment Act, 1870, 33 & 34 Vict. c. 90, s. 11), be treated as if it were within the limits of Her Majesty's dominions.

[1] The following are illustrative specimens of treaties made with native chiefs in Africa:—

'[*name of chief*] hereby declares that he has placed himself and all his territories, countries, peoples, and subjects under the protection, rule, and government of the Imperial British East Africa Company, and has ceded to the said Company all its [*qu.* his] sovereign rights and rights of government over all his territories, countries, peoples, and subjects, in consideration of the said Company granting the protection of the said Company to him, his territories, countries, peoples, and subjects, and extending to them the benefit of the rule and government of the said Company. And he undertakes to hoist and recognize the flag of the said Company.' Hertslet, *Map of Africa by Treaty*, i. 166.

'We, the undersigned Sub-Chiefs, . . . acting for and on behalf of the Wanyassa people living within [specified limits], most earnestly beseech Her Most Gracious Majesty the Queen of Great Britain and Ireland . . . to take our country, ourselves, and our peoples under her special protection, we solemnly pledging and binding ourselves and our peoples to observe the following conditions:—

'1. That we give, over all our country within the above-described limits, all sovereign rights, and all and every other claim absolutely, and without any reservation whatever, to Her Most Gracious Majesty the Queen [&c.] for all time coming.' Hertslet, i. 188.

It is difficult to see what residuum of sovereignty remains after these cessions.

[2] *Times*, July 29, 1896.

And this might, perhaps, reasonably be held, for the nature of the sovereignty exercised by the British Crown within the protectorate was such that the British Crown and its agents and officers could, whilst a protected native chief could not, prevent an aggression from the protectorate into neighbouring territory, and consequently such an aggression was within the mischief of the Act.[1] It must be remembered, however, that the points of law arising in the Jameson case were not fully argued, and that the language of a charge to the jury cannot always be construed with the same strictness as the language of a judgement. The law was laid down in the Jameson case with reference to the construction of a particular statute, and the propositions embodied in the chief justice's charge must not receive too wide an application. It seems clear that for ordinary purposes the territory of a protectorate is foreign and not British territory. If this were not so, orders for establishing and regulating the jurisdiction exercisable within it by British authorities could not be made under the Foreign Jurisdiction Act. Perhaps it would be accurate to say that for the purposes of municipal law the territory of the Bechuanaland Protectorate is not, but for the purposes of international law must be treated as if it were, part of the British dominions. The line of division is thin, but it exists, and it has its utility. If the objection is raised that protectorates of this kind are inconsistent with previously received rules and formulae of international law, the answer is that they have been found by practical experience to provide a convenient halfway house between complete annexation and complete abstinence from interference; that international law is an understanding between civilized nations with respect to the rules applicable to certain existing facts; that it is in a state of constant growth and development; and that when new facts make their appearance the appropriate rules and formulae will speedily be devised.[2]

[1] See the Order in Council as to jurisdiction in the protectorate, below, p. 405.

[2] The terms 'protectorate' and 'sphere of influence' have sometimes

Persons over whom consular jurisdiction is exercisable.

The application to protectorates of the machinery of the Foreign Jurisdiction Acts has brought into greater prominence the question as to the classes of persons with respect to whom the jurisdiction exercised in accordance with those Acts can be or ought to be exercised. The answer to these questions depends upon the nature and origin of the jurisdiction, and on the terms of the instrument by which the jurisdiction is regulated. As the jurisdiction is derived from an arrangement between the British Crown and the territorial sovereign, it clearly can be made exercisable in the case of persons under either of those authorities. But in the territories where it was first exercised, it was required for the protection of foreigners, and was not intended for, and was not exercised in the case of, subjects of the territorial sovereign. The classes of persons for whom it was intended were either British subjects or persons entitled to the political protection of the British Crown. And the Ottoman Order in Council of 1899 (Articles 16–19), like other Orders in Council framed on the same lines, includes British-protected persons in its definition of British subjects (Art. 3) and orders provision for the registration of British subjects as so defined. In the

been loosely treated as synonymous. But the latter term has merely a negative meaning. It implies an engagement between two States, that one of them will abstain from interfering or exercising influence within certain territories, which, as between the contracting parties, are reserved for the operations of the other. Such an engagement does not of itself involve the exercise of any powers or the assumption of any responsibility by either State within the sphere of influence reserved to itself. But the exclusion of interference by one of the States within a particular territory may involve the assumption by the other of some degree of responsibility for the maintenance of order within that territory. Thus a sphere of influence is a possible protectorate, and tends to pass into a protectorate, just as a protectorate tends to pass into complete sovereignty. The chief use of establishing a sphere of influence appears to be to minimize the risk of war arising from scrambles for territory, and to obviate the necessity for effective occupation as a bar to annexation or encroachment by a competent State. But the arrangement on which a 'sphere of influence' is based has, of itself, no international validity, and is not binding except on such States as are parties to the arrangement. The phrase was invented to meet a transient state of things, and is perhaps tending to become obsolete.

case of the *Laconia*,[1] which was between British subjects and Russian subjects in respect of a collision between a British and a Russian ship, it was found by the Judicial Committee of the Privy Council that the Ottoman Government had long acquiesced in allowing the British Government jurisdiction between British subjects and subjects of other Christian States exercised by means of consular courts, and that whilst there was no compulsory power in a British court in Turkey over any but British subjects, a Russian or other foreigner might voluntarily submit to the jurisdiction of such a court with the consent of his sovereign.

Consequences of establishment of protectorate.

The decision in the *Laconia* case applied to a state of circumstances where there were several Powers exercising extra-territorial jurisdiction in the territories of the same State. It requires modification in its application to the conditions of a protectorate. The assumption of control over the foreign relations, or, to use another expression, over the external sovereignty, of a State implies the assumption of responsibility both for the safety and for the good conduct of foreigners who resort to the territories of the protected State and who are not subjects of the protecting State; that is to say, for matters which, in the case of an independent State, are dealt with by diplomatic intervention. And, except where the local law and administration of justice are in full conformity with European standards, this responsibility cannot be effectively discharged unless the courts of the protecting State exercise jurisdiction over such foreigners.

Conversely, when the protecting State establishes courts with competent jurisdiction and adequate security for the administration of justice in accordance with Western ideas, the necessity for consular courts of other Western Powers disappears. Thus, when France established a protectorate over the regency of Tunis and set up French courts in the regency, the Queen consented to abandon her consular jurisdiction, with a view to British subjects in the regency becoming

[1] (1863) 2 Moo. P. C., N. S., 161; 33 Law Journal, N. S., P. M. & A. 11.

justiciable by those French courts under the same conditions as French subjects.[1]

Accordingly, the assumption of an exclusive protectorate seems to imply the exercise of jurisdiction over foreigners and the exclusion of the jurisdiction of foreign consular courts, and in the opinion of the latest authorities on international law jurisdiction over foreigners is, in such protectorates, legally exercisable.[2]

Jurisdiction in African protectorates.

The mode in which the powers exercisable under the Foreign Jurisdiction Act have been applied to uncivilized regions, and have been gradually extended in their adaptation to protectorates, may be illustrated by the Orders in Council which have at various times been made for different regions in Africa.

A comparatively early stage in the process of development is represented by an Order of 1889[3] under which 'local jurisdictions' could be constituted where necessary. The Order declared that the powers conferred by it within a local jurisdiction was to extend to the persons and matters following, in so far as by treaty, grant, usage, sufferance, or other lawful means Her Majesty had power or authority in relation to such persons and matters, that is to say :—

(1) British subjects as defined by the Order ;

(2) The property and personal and proprietary rights and obligations of British subjects within the local jurisdiction (whether such subjects were or were not within the jurisdiction), including British ships with their boats and the persons and property on board thereof, or belonging thereto ;

(3) Foreigners, as defined by the Order, who should submit

[1] The British consular jurisdiction established in Tunis under the Foreign Jurisdiction Acts was expressly abolished by the Order in Council of December 31, 1883.

[2] See, e.g., Westlake, *Chapters on Principles of International Law*, p. 187; *International Law*, Part I, Peace, chap. vi.

[3] The Africa Order in Council, 1889. *Stat. R. and O. Rev.*, vol. v, p. 1. This Order and the amending Order of 1892 have been practically superseded by the Orders of 1902 for British Central Africa and British East Africa

themselves to a court, in accordance with the provisions of the Order;

(4) Foreigners, as defined by the Order, with respect to whom any State, king, chief, or Government, whose subjects, or under whose protection they are, had, by any treaty, as defined by the Order, or otherwise, agreed with Her Majesty for, or consented to, the exercise of power or authority by Her Majesty.

The term 'British subject' was defined as including not only British subjects in the proper sense of the word, but also any persons enjoying Her Majesty's protection and, in particular, subjects of the several princes and States in India in alliance with Her Majesty, residing and being in the parts of Africa mentioned in the Order.[1] The term 'foreigner' was defined as meaning a person, whether a native or subject of Africa or not, who was not a British subject within the meaning of the Order.

Whether the Order authorized the exercise of criminal jurisdiction over 'foreigners' seems open to doubt, and the exercise under it of civil jurisdiction in respect of a 'foreigner' was expressly declared to require his specific consent in each case, whilst the court was also empowered to require evidence that no objection was made by the Government whose subject the foreigner was.

These restrictions on the exercise of jurisdiction over foreigners were soon found to be incompatible with the conditions of a protectorate, and accordingly the jurisdiction received a wide extension under the Africa Order in Council, 1892. This Order, after reciting in the usual terms that, by treaty, grant, usage, sufferance, and other lawful means, Her Majesty the Queen had power and jurisdiction in the parts of Africa mentioned in the Order of 1889, went on to recite that—

[1] This language is in accordance with the terms of the enactment which is reproduced by s. 15 of the Foreign Jurisdiction Act, 1890, and which was passed before the Interpretation Act, 1889.

'By the general Act of the Conference of Berlin signed in 1885 the several Powers who were parties thereto (in this Order referred to as the Signatory Powers) declared, with respect to occupations in Africa by any of the Signatory Powers, that the establishment of authority in protected territories was an obligation resting upon the respective protecting Powers; and that, in order to the due fulfilment of the said obligations, as respects territories and places within the limits of the Order of 1889, which Her Majesty should have declared to be under the protection of Her Majesty, it was necessary that the subjects of the Signatory Powers, other than Her Majesty, should be justiciable under that Order in like manner as British subjects, and that for this purpose the provisions of the Order referring to British subjects should, as far as practicable, be extended to the subjects of those Powers.'

It then proceeded to enact that—

'Where Her Majesty has declared any territory or place within the limits of the Africa Order in Council, 1889, to be a protectorate of Her Majesty, the provisions of that Order having reference to British subjects, except Part XIV thereof,[1] shall extend in like manner to foreigners to whom this Order applies, and all such foreigners shall be justiciable by the courts constituted by the said Order for the protectorate under the same conditions as British subjects, and to the extent of the jurisdiction vested by law in those courts; and Part XII [2] and so much of the rest of the Order as requires the consent of any foreigner as a condition of the exercise of jurisdiction shall be of no force or effect in the protectorate, so far as respects foreigners to whom this Order applies.'

The Order defined the expression 'foreigners to whom this Order applies' as meaning subjects of any of the Signatory Powers, except Her Majesty, or of any other Power which had consented that its subjects should be justiciable under the Africa Order of 1889 and the Order of 1892.

It will be seen that the jurisdiction exercisable under the Orders of 1889 and 1892, though very extensive in its scope, was still personal in its character.

These Orders were framed by the Foreign Office. But in the meantime the Colonial Office had been framing Orders which proceeded on different and bolder lines, and which appear to give jurisdiction in general terms, without distinction between British subjects and foreigners, and without reference to any acquiescence or consent, express or implied. The

[1] Part XIV provides for the registration of British subjects.

[2] As to civil jurisdiction over foreigners with the consent of themselves or their Governments.

Order made for the Bechuanaland Protectorate on May 9, 1891,[1] after reciting that the territories of South Africa situate within the limits of the Order as described were under the protection of Her Majesty the Queen, and that by treaty, grant, usage, sufferance, and other lawful means Her Majesty had power and jurisdiction in those territories, enacted as follows :—

'II. The high commissioner may, on Her Majesty's behalf, exercise all powers and jurisdiction which Her Majesty, at any time before or after the date of this Order, had or may have within the limits of this Order, and to that end may take or cause to be taken all such measures, and may do or cause to be done all such matters and things within the limits of this Order as are lawful, and as in the interest of Her Majesty's service he may think expedient, subject to such instructions as he may from time to time receive from Her Majesty or through a secretary of state.

'III. The high commissioner may appoint so many fit persons as in the interest of Her Majesty's service he may think necessary to be deputy commissioners, or resident commissioners, or assistant commissioners, or judges, magistrates, or other officers, and may define from time to time the districts within which such officers shall respectively discharge their functions.

'Every such officer may exercise such powers and authorities as the high commissioner may assign to him, subject nevertheless to such directions and instructions as the high commissioner may from time to time think fit to give him.

'The appointment of such officers shall not abridge, alter, or affect the right of the high commissioner to execute and discharge all the powers and authorities hereby conferred upon him.

'The high commissioner may remove any officer so appointed.

'IV. In the exercise of the powers and authorities hereby conferred upon him, the high commissioner may, amongst other things, from time to time, by proclamation provide for the administration of justice, the raising of revenue, and generally for the peace, order, and good government of all persons within the limits of this Order, including the prohibition and punishment of acts tending to disturb the public peace.

'The high commissioner in issuing such proclamations shall respect any native laws or customs by which the civil relations of any native chiefs, tribes, or populations under Her Majesty's protection are now regulated, except so far as the same may be incompatible with the due exercise of Her Majesty's power and jurisdiction.

. . . . . .

'VII. The courts of British Bechuanaland shall have in respect of matters occurring within the limits of this Order the same jurisdiction,

[1] *Stat. R. and O. Rev.*, vol. v, p. 109.

civil and criminal, original and appellate, as they respectively possess from time to time in respect of matters occurring within British Bechuanaland, and the judgements, decrees, orders, and sentences of any such court made or given in the exercise of the jurisdiction hereby conferred may be enforced and executed, and appeals therefrom may be had and prosecuted, in the same way as if the judgement, decree, order, or sentence had been made or given under the ordinary jurisdiction of the court.

'But the jurisdiction hereby conferred shall only be exercised by such courts, and in such manner and to such extent, as the Governor of British Bechuanaland shall by proclamation from time to time direct.'

The Matabeleland Order in Council, 1894, now superseded by the Southern Rhodesia Order in Council, 1898, was framed on similar principles, and the same principles have been followed in the Orders which have since been made for different parts of South, East, and West Africa. They set up high courts and make administrative and legislative arrangements hardly distinguishable in their character from those adopted for regions which have been formally incorporated in the King's dominions.[1]

Conclusions as to jurisdiction under Foreign Jurisdiction Acts.

The general conclusions as to the classes of persons and cases with respect to which jurisdiction may be exercised by courts established by Orders in Council in accordance with the Foreign Jurisdiction Acts appear to be—

1. The principles on which the jurisdiction rests do not exclude its exercise with respect to any classes of persons being the subjects, or under the authority, of the State which establishes the court, or of the State in whose territory the court is established, or any classes of cases, whether civil or criminal.

2. But in practice the jurisdiction, being required mainly for the protection of foreigners, is not usually exercised in

[1] See the Africa Order printed in *Stat. R. and O. Rev.*, vol. v. The Orders in Council made for the 'hinterland' protectorates adjoining British colonies on the West Coast of Africa have, instead of defining the jurisdiction exercisable in protectorates, transferred the powers of legislating for them to the legislature of the adjacent British colony. The legislation under these powers is either specific or simply applies the colonial law. In some cases jurisdiction appears to be exercisable over all persons. In other cases it is left with the chiefs, subject to the direction and control of the British authorities.

disputes between natives of the country or in criminal proceedings which do not affect foreigners.

3. As respects persons who are not subjects either of the State which establishes the court, or of the State in whose territory the court is established, the exercise of the jurisdiction, according to the view adopted in framing most of the Orders in Council, requires consent, express or implied, on the part of those persons or of the States to whom they belong, but a general consent to the exercise of jurisdiction over all or any of the subjects of any State may be implied by acquiescence, or by such acts as the recognition of a protectorate.

4. In the case of certain protectorates in Africa the jurisdiction has been given in more general and indefinite terms, and apparently is capable of being exercised over any persons and in any cases over and in which territorial jurisdiction is exercisable.[1]

5. The Order in Council can limit and define in any manner which may be considered expedient the classes of persons and cases with respect to which jurisdiction is to be exercised.

Application of principles to India.

In considering the application of the foregoing principles to India, the chief differences to be borne in mind are:—

(1) The limitations on the powers of the Indian Legislature, by which is meant the authority described in Acts of Parliament as 'the Governor-General in Council at meetings for the purpose of making laws and regulations';

(2) The special relation in which the Government of India, as representative of the paramount Power, stands to the Native States.

[1] The references to native law and custom in some of these Orders clearly show that jurisdiction was intended to be exercised under them in cases between natives of the country. For a very curious illustration of the mode in which this kind of jurisdiction has been exercised on the West Coast of Africa, see *Fanti Customary Laws*, by J. M. Sarbah (London, 1897).

Powers of *Indian* Legislature.

The Indian Legislature is the creation of statute. Its powers are derived wholly from Acts of Parliament, and are limited with reference to persons, places, and subject-matter by the Acts of Parliament by which they are conferred.

Section 43 of the Government of India Act, 1833 (3 & 4 Will. IV, c. 85), empowered the Governor-General in Council to make, subject to certain restrictions, 'laws and regulations for repealing, amending, or altering any laws or regulations whatever then in force, or thereafter to be in force, in the said territories (i.e. the territories under the government of the East India Company), or any part thereof, and to make laws and regulations for all persons, whether British or native, foreigners or others, and for all courts of justice, whether established by His Majesty's charters or otherwise, and the jurisdictions thereof, and for all places and things whatsoever within and throughout the whole and every part of the said territories, and for all servants of the said Company within the dominions of princes and States in alliance with the said Company' (i.e. the East India Company).[1]

[1] As to the powers exercisable under this section the following opinion was given to the East India Company in 1839 :—

'We think the Legislative Council has power to make laws to provide for the punishment of offences in cases here contemplated. The Legislative Council has power to pass laws enacting and declaring that crimes and offences committed in the territories of princes or States in India adjacent to the British territories by persons, the native subjects of and owing obedience to the laws of such British territories, shall be liable to be tried and punished as if committed within the local limits of the British territories. Crimes and offences against the State, and the crimes of forgery, coining, &c., might frequently be committed without the limits of the Company's territories. Indeed, by the existing laws, British subjects are liable to be tried in the supreme courts for offences committed anywhere within the Company's limits. We do not consider the affirmative clause in 3 & 4 Will. IV, c. 85, s. 43, giving the power to the Legislative Council to make laws "for all servants of the said Company within the dominions of princes and States in alliance with the said Company," as restraining the Legislative Council from making laws for the purposes in question, but as either perhaps unnecessary or as meant to remove all doubt as to the power to bind servants of the Company in the particular case specified, who might not be (as occasionally happens) either natives or subjects of the British territories or British subjects of Her Majesty.

'We think that the Legislative Council has power in the same manner

This section has been superseded by the Indian Councils Act, 1861, and has been repealed, but is still of importance as the enactment under which the Penal Code of 1860 was made.

The enactments on which the powers of the Indian Legislature now depend are the Indian Councils Act, 1861, as supplemented by an Act of 1865 and an Act of 1869, and explained by an Act of 1892.

Section 22 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), empowered the Indian Legislature, subject to the provisions of the Act, to make laws and regulations for repealing, amending, or altering any laws or regulations whatever 'now in force or hereafter to be in force in the Indian territories now under the dominion of Her Majesty, and to make laws and regulations for all persons, whether British or native, foreigners or others, and for all courts of justice whatever, and for all places and things whatever, within the said territories, and for all servants of the Government of India within the dominions of princes and States in alliance with Her Majesty.'

Section 1 of the Government of India Act, 1865 (28 & 29 Vict. c. 17), after reciting that the Governor-General in Council had power to make laws and regulations for all persons, British or native, within the Indian dominions, and

to provide for the trial and punishment of crimes and offences committed upon the high seas, enacting and declaring them to be offences of the same quality and triable and punishable as if they had been committed on land, as has been done as to offences committed at sea by British statutes. It would, of course, be proper to limit the application of such a law to persons, natives and subjects, owing obedience to the laws of the British territories. For piracy, &c., provision has been made by existing laws.

(*Signed*) J. CAMPBELL,
R. M. ROLFE,
R. SPANKIE,
JAMES WIGRAM.

'Temple, January 30, 1839.'

But it is difficult to reconcile this opinion with the opinion subsequently given as to the inability of the Indian Legislature to pass laws binding on natives of British India outside the territories of British India (see Forsyth, *Cases and Opinions on Constitutional Law*, pp. 17, 32).

that it was 'expedient to enlarge the powers of the Governor-General in Council by authorizing him to make laws and regulations for all British subjects within the dominions of' native princes, empowered the Indian Legislature to make laws and regulations for all British subjects of Her Majesty within the dominions of princes and States in India in alliance with Her Majesty, whether in the service of the Government of India or otherwise.

Section 1 of the Indian Councils Act, 1869 (32 & 33 Vict. c. 98), empowered the Indian Legislature to make laws and regulations for all persons, being native Indian subjects of Her Majesty, without and beyond as well as within the Indian territories under the dominion of Her Majesty.

Section 2 of the Indian Councils Act, 1892 (55 & 56 Vict. c. 14), explains that the expression 'now under the dominion of Her Majesty,' in the Act of 1861, is to be read as if the words 'or hereafter' were inserted after 'now.'

It will be observed that the expression used in the Act of 1861 is, 'within the dominions of princes and States in alliance with Her Majesty,' an expression substituted for and apparently framed on the words in the Act of 1833, 'princes and States in alliance with the said Company.' The expression in the Act of 1865 is, 'princes and States in India in alliance with Her Majesty.' The language used in the Act of 1861, if construed literally, would seem wide enough to include the territories of any friendly State, whether in Europe or elsewhere. But some limitation must be placed upon it, and it may perhaps be construed as including States having treaty relations with the Crown through the Government of India, whether subject to the suzerainty of Her Majesty or not.[1] However this may be, the power of the Indian Legislature to make laws binding on persons, other than natives of British India, outside British India and the Native

[1] This seems to be the construction adopted by the late Mr. Justice Stephen, who says: 'The Government of India has power to legislate for public servants both in Native States included in British India, and in Native States adjacent to British India.' *History of Criminal Law*, ii. 12.

States of India, seems, under existing circumstances, to be open to question.

Doubts have also been raised as to the class of persons for whom, under the denomination of 'British subjects,' legislative powers may be exercised under the Act of 1865. The preamble of that Act speaks of 'all persons, *British or natives*, within the Indian dominions,' and the Act then gives power to legislate for *all British subjects* in Native States. It was accordingly argued that 'British subjects' did not include natives of British India.[1] The difficulty arising from this particular doubt was removed by the wider language of the Act of 1869, but it is still not perfectly clear whether the power of the Indian Legislature under the Acts of 1865 and 1869 to make laws operating on British subjects outside British India extends to persons who are neither British subjects of European descent nor natives of British India. The earlier enactments relating to India were passed at a time when it was doubtful whether, or how far, British sovereignty extended beyond the presidency towns, and when full powers of sovereignty were not exercised over natives of the country even within those towns. Notwithstanding the declaration in the preamble to the Charter Act of 1813 that the possession of the territorial acquisitions of the Company in India was to be 'without prejudice to the undoubted sovereignty of the Crown of the United Kingdom of Great Britain and Ireland in and over the same,' there was still room for doubt whether the native inhabitants of those possessions were British subjects within the meaning usually attached to that term by Acts of Parliament, and whether their status did not more nearly resemble that of natives of the territories in Africa which are under British protection, but have not been formally incorporated in the British dominions. Consequently the term 'British subject' has to be construed in a restricted sense in the earlier of these enactments, and it is possible that the restricted meaning

[1] See Minutes by Sir H. S. Maine, Nos. 36 and 73.

which had been attached to it by usage still continued to attach to it when used in some of the enactments dating subsequently to the time when British India had passed under the direct and immediate sovereignty of the Crown. The term as used in Acts of Parliament was never precisely defined, and perhaps was treated as including generally white-skinned residents or sojourners in the country by way of contradistinction to the native population.[1]

After the status of 'Roman citizenship' had been extended to all the inhabitants of British India, the Indian Legislature found it expedient to devise a term which should indicate the class formerly known as British subjects in the narrower sense, and for that purpose they invented the definition of European British subject, which is now to be found in s. 4 of the Code of Criminal Procedure, 1898. That section declares that 'European British subject' means—

'(1) Any subject of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland, or in any of

[1] The doubts which were at one time entertained as to the meaning to be attached to the term 'British subject,' in its application to persons born or living in India, are well illustrated by a note which is quoted at p. 89 of Morley's *Digest* from an edition by Mr. L. Clarke of the statute 9 Geo. IV, c. 33. This note says: 'According to one opinion, all persons born within the Company's territories are British subjects. This opinion is founded on the supposition that these territories are British colonies, and stand in the same situation as the island of Bombay, the Canadas, the Cape of Good Hope, or any other colony which has been acquired by conquest or ceded by treaty. According to another opinion, those persons only are British who are natives, or the legitimate descendants of natives, of the United Kingdom or the colonies which are admitted to be annexed to the Crown. A third opinion considers Christianity to be a test of an individual being a British subject, provided that the person was born in the Company's territories; and according to this an Armenian, or the legitimate offspring (being a Christian) of English and native parents, would be a British subject. Nothing positive can be gathered from any of the Acts of Parliament, excepting that 9 Geo. IV, c. 33, appears to negative the position that Muhammadans and Hindus are British subjects; and the Jury Act, 7 Geo. IV, c. 37, seems to be equally opposed to any persons being British subjects but natives, or the legitimate descendants of natives, of the United Kingdom or its acknowledged colonies.'

See also the fifth Appendix to the Report from the Select Committee of the House of Commons in 1831, pp. 1114, 1142, 1146 et seq., 1168, 1178, 1229. 4to edition.

the European, American, or Australian colonies or possessions of Her Majesty, or in the colony of New Zealand, or in the colony of Cape of Good Hope or Natal;

'(2) Any child or grandchild of any such person by legitimate descent.'

This definition is open to much criticism, and obviously errs both by way of redundancy and by way of deficiency. It can hardly be treated as a precise equivalent of the term 'British subject' in its older sense, although it is intended to have approximately the same meaning. If the term 'British subject' in the Act of 1865 were to be construed as equivalent to 'European British subject' in the Indian Code of Criminal Procedure, there would appear to be no power under the existing statutory enactments for the Indian Legislature to make laws, say, for a native of Ceylon in the territories of the Nizam. But the language of the Act of 1865 can hardly be construed by the light of an artificial definition which was invented at a subsequent date. And even if the expression is used in a restricted sense, probably the most reasonable construction to put on it is that it includes all British subjects except natives of India.

The Indian Legislature has also power under special enactments to make laws with extra-territorial operation on particular subjects. For instance, under the Indian Marine Service Act, 1884 (47 & 48 Vict. c. 38), the Indian Legislature may make laws for the Indian Marine Service with operation throughout Indian waters, which are defined as the high seas between the Cape of Good Hope on the west and the Straits of Magellan on the east, and any territorial waters between those limits.

So also s. 264 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), enacts that if the legislature of a British possession—an expression including India—by any law apply or adapt to any British ships registered at, trading with, or being at any port in that possession, and to the owners and masters and crews of those ships, any provisions in Part II of that Act which do not otherwise so apply, the

law is to have effect throughout His Majesty's dominions and in all places where His Majesty has jurisdiction in the same manner as if it were enacted in the Merchant Shipping Act itself.

In like manner s. 368 of the Merchant Shipping Act enacts that the Governor-General of India in Council may, by any Act passed for the purpose, declare that all or any of the provisions of Part III of the Merchant Shipping Act, 1894, shall apply to the carriage of steerage passengers upon any voyage from any specified port in British India to any other specified port whatsoever, and may for the purposes of Part III of the Act fix dietary scales, declare the space for steerage passengers, and do other things; and the provisions of any such Act while in force are to have effect without as well as within British India as if enacted by the Merchant Shipping Act itself.

Acts of the Imperial Parliament and charters made under or confirmed by such Acts have also given courts in British India extra-territorial jurisdiction which could not have been conferred on them by Acts of the Indian Legislature. See, e.g., 33 Geo. III, c. 52, s. 156; 9 Geo. IV, c. 74, s. 1; 12 & 13 Vict. c. 96; 23 & 24 Vict. c. 88; 53 & 54 Vict. c. 27.

On the same principle the Slave Trade Act, 1876 (39 & 40 Vict. c. 46), enacted that if any person, being a subject of Her Majesty, or of any prince or State in India in alliance with Her Majesty, should on the high seas or in any part of Asia or Africa specified by Order in Council in that behalf commit any of certain offences relating to slave trade under the Penal Code, or abet the commission of any such offence, he will be dealt with as if the offence or abetment had been committed in any place within British India in which he may be or may be found; and, under s. 2, if the Governor-General in Council amends any of those provisions or makes further provisions on the same subject, a copy of the amending Act may be laid before both Houses of Parliament, and then, unless an address is presented to the contrary, the King

may by Order in Council give the amending provisions the same extra-territorial operation as the provisions amended.[1]

The Indian Legislature has exercised its power of legislating for offences committed outside British India by provisions which are to be found in the Penal Code of 1860 and in the *Code of Criminal Procedure, 1898*.

Under s. 3 of the Penal Code, any person liable by any law passed by the Governor-General of India in Council to be tried for an offence committed beyond the territories of British India, is to be dealt with according to the provisions of the Code, for any act committed beyond those territories, in the same manner as if the act had been committed within them.

Under s. 4 of the Penal Code, every servant of the King is subject to punishment under the Code for every act or omission contrary to its provisions, of which, whilst in such service, he is guilty within the dominions of any prince or State in alliance with the King by virtue of any treaty or engagement theretofore entered into by the East India Company or made in the name of the Crown by any Government of India.

Section 188 of the Code of Criminal Procedure, 1898, enacts that—

Liability of British subjects for offences committed out of British India.

When a native Indian subject of Her Majesty commits an offence at any place *without and beyond the limits of British India, or*

when any British subject commits an offence in the territories of any Native Prince or Chief in India, or

when a servant of the Queen (whether a British subject or not) commits an offence in the territories of any Native Prince or Chief in India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Political Agents to certify fitness of inquiry into charge.

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India; and, where there is no Political Agent, the sanction of the Local Government shall be required:

[1] See remarks on this enactment in Westlake, *Chapters on Principles of International Law*, p. 222.

Provided, also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

XXI of 1879.

The provisions of the existing Code of Criminal Procedure may be taken to represent the construction which the Indian Legislature has thought it safe and prudent to place on the enactments giving that legislature power to make laws with *extra-territorial operation.*[1]

Conclusions as to general powers of Indian Legislature.

The general conclusions appear to be :—

1. The Indian Legislature is not in any sense an agent or delegate of the Imperial Parliament,[2] but its powers are limited by the terms of the Acts of Parliament by which those powers are conferred.

2. The Indian Legislature has power to make laws—

(*a*) for native Indian subjects of His Majesty or native Indian soldiers in His Majesty's Indian forces in any part of the world ; and

(*b*) for British subjects, in a narrow sense, and servants of the Government, in Native States.

3. Whether the Indian Legislature has power to make laws for British subjects, not being either European British subjects or natives of India, in Native States, or to make

[1] The construction of the provisions as to extra-territorial jurisdiction in earlier editions of the Code of Criminal Procedure, and in the Indian Foreign Jurisdiction and Extradition Act, 1879, now superseded by an Order under the Foreign Jurisdiction Act of the British Parliament, gave rise, in the Indian courts, to difficult questions, which are illustrated by the following cases : *R.* v. *Pirtal*, (1873) 10 Bom. Rep. 356 ; *R.* v. *Lukhya Govind*, (1875) I. L. R. 1 Bom. 50 ; *Empress* v. *Surmook Singh*, (1879) I. L. R. 2 All. 218 ; *Empress* v. *S. Moorga Chatty*, (1881) I. L. R. 5 Bom. 338 ; *Siddha* v. *Biligiri*, (1884) I. L. R. 7 Mad. 354 ; *Queen Empress* v. *Edwards*, (1884) I. L. R. 9 Bom. 333 ; *Queen* v. *Abdul Latib*, (1885) I. L. R. 10 Bom 186 ; *Gregory* v. *Vudakasi Kanjani*, (1886) I. L. R. 10 Mad. 21 ; *Queen Empress* v. *Mangal Takchand*, (1886) I. L. R. 10 Bom. 274 ; *Queen Empress* v. *Kirpal Singh*, (1887) I. L. R. 9 All. 523 ; *Queen Empress* v. *Daya Bhima*, (1888) I. L. R. 13 Bom. 147 ; *Re Hayes*, (1889) I. L. R. 12 Mad. 39 ; *Queen Empress* v. *Natwarai*, (1891) I. L. R. 16 Bom. 178 ; *Queen Empress* v. *Ganpatras Ram Chandra*, (1893) I. L. R. 19 Bom. 105.

[2] *R.* v. *Burah*, L. R. 3 App. Cas. 889.

laws for British subjects not being natives of India, or for servants of the Government, as such, in States outside India as defined by the Interpretation Act and by the Indian General Clauses Act, that is to say, in places which are not either in British India or in the territory of a Native State, is open to question.

4. Except in these cases, and except in pursuance of special enactments, such as the Indian Marine Service Act, the operation of Acts of the Indian Legislature is strictly territorial, and extends only to persons and things within British India.

5. The Indian Legislature has gone further than Parliament in the exercise of the extra-territorial powers which it possesses.

Extra-territorial powers of governor-general in executive capacity.

But the Governor-General in Council has in his executive capacity extra-territorial powers far wider than those which may be exercised by the Indian Legislature. By successive charters and acts extensive powers of sovereignty have been delegated by the English Crown, first, to the East India Company, and afterwards to the Governor-General in Council as its successor. The Governor-General in Council is the representative in India of the British Crown, and as such can exercise under delegated authority the powers incidental to sovereignty with reference both to British India and to neighbouring territories, subject to the restrictions imposed by Parliamentary legislation and to the control exercised by the Crown through the Secretary of State for India. Thus he can make treaties and conventions with the rulers, not only of Native States within the boundaries of what is usually treated as India, but also of adjoining States which are commonly treated as extra-Indian, such as Afghanistan and Nepaul, and can acquire and exercise within the territories of such States powers of legislation and jurisdiction similar to those which are exercised by the Crown in foreign countries in accordance with the Foreign Jurisdiction Acts and the Orders in Council under them, and extending to persons who are not subjects of the King.

The existence of these powers was until recently declared, and their exercise was to some extent regulated, by the Foreign Jurisdiction and Extradition Act, 1879, of the Government of India, which contained recitals corresponding to those in the Foreign Jurisdiction Act, 1890, passed by the Parliament at Westminster. But a few years ago it was recognized that the extra-territorial powers exercisable by the Governor-General in Council, as representative of the British Crown, rested on the same principles, and might with advantage be based on the same statutory foundations, as the extra-territorial powers of the British Crown in other parts of the world. Accordingly, in 1902, an Order in Council under the Act of 1890 made provision for the exercise of foreign jurisdiction by the Governor-General of India in Council, and the Indian Act of 1879, having been superseded as to foreign jurisdiction by this Order, and as to other matters by later Indian legislation, was formally repealed by the Indian Act XV of 1903.

The Order of 1902 is of sufficient importance to justify its being set out in full. It runs as follows :—

1. This Order may be cited as the Indian (Foreign Jurisdiction) *Order in Council, 1902.*

2. The limits of this Order are the territories of India outside British India, and any other territories which may be declared by His Majesty in Council to be territories in which jurisdiction is exercised by or on behalf of His Majesty through the Governor-General of India in Council, or some authority subordinate to him, including the territorial waters of any such territories.

3. The Governor-General of India in Council may, on His Majesty's behalf, exercise any power or jurisdiction which His Majesty or the Governor-General of India in Council for the time being has within the limits of this Order, and may delegate any such power or jurisdiction to any servant of the British Indian Government in such manner, and to such extent, as the Governor-General in Council from time to time thinks fit.

4. The Governor-General in Council may make such rules and orders as may seem expedient for carrying this Order into effect, and in particular—

(*a*) for determining the law and procedure to be observed, whether by applying with or without modifications all or any of the provisions of any enactment in force elsewhere, or otherwise ;

(*b*) for determining the persons who are to exercise jurisdiction, either generally or in particular classes of cases, and the powers to be exercised by them;

(c) for determining the courts, authorities, judges, and magistrates, by whom, and for regulating the manner in which, any jurisdiction, auxiliary or incidental to or consequential on the jurisdiction exercised under this Order, is to be exercised in British India;

(*d*) for regulating the amount, collection, and application of fees.

5. All appointments, delegations, certificates, requisitions, rules, notifications, processes, orders, and directions made or issued under or in pursuance of any enactment of the Indian Legislature regulating the exercise of foreign jurisdiction, are hereby confirmed, and shall have effect as if made or issued under this Order.

6. The Interpretation Act, 1889, shall apply to the construction of this Order.

The substitution of an Order in Council under the Foreign Jurisdiction Act, 1890, for an Act of the Indian Legislature has placed the extra-territorial jurisdiction of the Governor-General in Council on a wider and firmer basis, and has removed many of the doubts and difficulties to which reference was made in the first edition of this book, and which arose from the limitations on the powers of the Indian Legislature, and from the language of the statutes by which those powers were conferred.[1]

The language of the Order is wide enough to include every possible source of extra-territorial authority. The powers delegated are both executive and legislative, and are sufficiently extensive to cover all the extra-territorial powers previously exercised in accordance with Indian Acts. To guard against any breach of continuity, all appointments, rules, orders and other things made or done under any previous Indian Act regulating the exercise of foreign jurisdiction are expressly confirmed, and are to have effect as if made or done under the Order of 1902. The orders thus confirmed, and the orders issued under the new system, have usually taken the form of orders for different Native States, or for regions or districts or places within them, constituting

[1] Some fresh difficulties have, however, arisen under the Order of 1902 and the expediency of substituting a new Order has for some time been under consideration.

civil and criminal courts of different grades, and declaring the law which they are to administer, that law consisting of certain British Indian Acts with specified modifications. These orders are notified in the *Gazette* of India and are to be found in volumes issued by the Legislative Department of the Government of India. In editing these volumes the Legislative Department takes care to discriminate between enactments of the Indian Legislature which apply *proprio vigore* to certain classes of persons in Native States, and enactments which are, in the official language of India, 'applied' to certain portions of the territory of Native States, that is to say, become law by virtue of the Governor-General's order.

The local limits of the Order of 1902, that is to say, the areas within which, or with respect to which, jurisdiction and powers may be exercised under the Order, are, in the first place, the territories of India outside British India, in other words, the territories which are popularly known as the Native States of India, and which are described more technically in the Interpretation Act, 1889,[1] as territories of any native prince or chief under the suzerainty of His Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India. The actual extent of 'India' at any given time must always be a political question. And there may often be territories on the external fringe of, or outside, 'India,' within which it may be doubtful whether the British Crown has power and jurisdiction, and whether and how far that power and jurisdiction is delegated to the Governor-General in Council. These are the territories described in the preamble to the Order of 1902 as 'territories adjacent to India,' and the limits of the Order are declared by s. 2 to be not only 'the territories of India outside British India,' but 'any other territories which may be declared by His Majesty in Council to be territories in which jurisdiction is exercised by or on behalf of His Majesty through the

[1] 52 & 53 Vict. c. 63, s. 18 (5).

Governor-General in Council or some authority subordinate to him.' No such declaration has yet been made.

The territories within the limits of the Order are expressly declared to include the territorial waters of those territories. For instance, they include the territorial waters of Cutch.

The powers expressly conferred by the Act of 1890 of sending persons for trial to British territory (s. 6) and of assigning jurisdiction, original or appellate, to Courts in British territory (s. 9), may occasionally be found useful, but hardly go beyond the powers previously exercised in practice in accordance with the provisions of the Indian Acts.

The Act of 1890 does not contain any provision corresponding to s. 5 of the Indian Act of 1879, under which a notification in the *Gazette* of India was made conclusive proof of matters stated in relation to the exercise or delegation of jurisdiction. But, by s. 4 of the Act of 1890, a Secretary of State is empowered, on the request of a court of civil or criminal jurisdiction, to send an authoritative decision on any question which may arise as to the existence or extent of any jurisdiction of His Majesty in a foreign country.

The cases in which an authoritative decision of this kind, given under a full sense of political responsibility, is most likely to be found useful, are cases where jurisdiction, limited to special classes of persons or subjects, is exercised beyond the limits of India. With respect to the Native States of India one may anticipate that it will rarely, if ever, be needed. In these States there is no doubt that the British Crown has power and jurisdiction, and that this power and jurisdiction is delegated to the Governor-General in Council, and experience shows that the doubts which have from time to time been suggested as to the nature and extent of the powers so delegated rarely give rise to practical difficulties.

The Governor-General, as representative of the paramount power in India, has and exercises extensive sovereign powers over the Native States of India. Those Native States have often, and not improperly, been described as protectorates.

But they are protectorates in a very special sense. They differ materially from the European protectorates to which reference is made in text-books of European international law. They also differ from the protectorates established over uncivilized tribes and the territories occupied by them in Africa, because in all the Indian Native States, with the exception of some wild regions on the frontier, there is some kind of organized government to undertake the functions of internal administration. For the purposes of municipal law their territory is not British territory, and their subjects are not British subjects. But they have none of the attributes of external sovereignty, and for international purposes their territory is in the same position as British territory and their subjects are in the same position as British subjects. On the other hand, the Secretary of State has been advised that the subject of an Indian Native State would be an alien within the meaning of s. 7 of the Naturalization Act, 1870 (33 & 34 Vict. c. 14), so as to be capable of obtaining a certificate of naturalization under that section. Finally, the rulers of Indian Native States owe political allegiance to the King-Emperor. These peculiarities have an important bearing on the jurisdiction exercisable over European foreigners within the territories of those States.

Classes of persons to which jurisdiction extends.

In point of fact the jurisdiction of the Governor-General in Council within the territories of Native States is exercised—

(*a*) over European British subjects in all cases;

(*b*) over native Indian subjects in certain cases;

(*c*) over all classes of persons, British or foreign, within certain areas.

It is the policy of the Government of India not to allow native courts to exercise jurisdiction in the case of European British subjects, but to require them either to be tried by the British courts established in the Native State, or to be sent for trial before a court in British India.

The Government of India does not claim similar exclusive jurisdiction over native Indian subjects of His Majesty when

within Native States, but doubtless would assert jurisdiction over such persons in cases where it thought the assertion necessary. Apparently it does not in ordinary cases treat as native Indian subjects of His Majesty persons who are natural-born subjects by statute, that is to say, by reason of being children or grandchildren of native Indian subjects. But perhaps the question how such persons ought to be treated does not arise in a practical form.

The Government of India does not, except within special areas, or under special circumstances, such as during the minority of a native prince, take over or interfere with the jurisdiction of the courts of a Native State in cases affecting only the subjects of that State, but leaves such cases to be dealt with by the native courts in accordance with native laws.

The question as to whether the jurisdiction is exercisable over European foreigners in the territory of a Native State, if it should arise, would doubtless be answered as in the case of African protectorates. Even if consent of the foreigner's Government were held to be a necessary element of the jurisdiction in such cases, the notorious fact that a Native State of India is not allowed to hold diplomatic or other official intercourse with any other Power, and the general recognition by European States of the relation in which every such Native State stands to the British Crown, would doubtless be construed as implying a consent on the part of the Government of any European or American State to the exercise by British courts of jurisdiction. Indeed, for international purposes, as has been said above, the territory of Native States is in the same position as the territory of British India.

There are certain areas within which full jurisdiction has been ceded to the Government of India, and within which jurisdiction is accordingly exercised by courts and officers of the Government of India over all classes of persons as if the territory were part of British India. The most conspicuous instance of this is the district known as the Berars, or as the

Hyderabad Assigned Districts, which, although held under a perpetual lease, and administered as if it were part of the Central Provinces, is not, technically, within British India.[1] The same appears to be the position of the residencies and other stations in the occupation of political officers,[2] and of cantonments in the occupation of British troops.

Under arrangements which have been made with the Governments of several Native States, 'full jurisdiction' has been ceded in railway lands within the territories of those States. The effect of one of these grants was considered in a case which came before the Judicial Committee of the Privy Council in 1897.[3] In this case a magistrate at Simla issued a warrant for the arrest of a subject of the Nizam, in respect of an offence alleged to have been committed by him at Simla. The warrant was executed within the area of railway lands over which 'full jurisdiction' had been conceded by the Nizam, and the question was whether the execution of the warrant under these circumstances was legal. It was held that for the purpose of ascertaining the nature and extent of the 'full jurisdiction' conceded, reference must be made to the correspondence which had taken place between the Government of India and the Nizam, as showing the nature of the agreement between them, that on the true construction of this correspondence, the jurisdiction conceded must be limited to jurisdiction required for railway purposes, and that consequently the execution of the warrant was illegal.

The position of the residencies and cantonments in the territories of Native States has often been compared to the extra-territorial character recognized by European international law as belonging to diplomatic residencies and to cantonments in time of war. There is an analogy between

[1] See East India (Hyderabad) Agreement respecting the Hyderabad Assigned Districts, 1902; Cd. 1321.

[2] As to the civil and military station of Bangalore, see *Re Hayes*, (1888) I. L. R. 12 Mad. 39.

[3] *Muhammed Yusuf-Ud-Din* v. *The Queen Empress* (July 7, 1897).

the cases, but it is unnecessary to base the jurisdiction exercised in those places on that analogy. As has been seen above, the jurisdiction exercisable by the courts of a protecting State within the territories of a protected State may extend to all or any of the subjects, either of the protecting State or of the protected State, and, subject to certain limitations, to persons not belonging to either of these categories. The extent to which, and the cases in which, the jurisdiction is exercised over particular classes of persons are to be determined by agreement between the State which exercises the jurisdiction and the State within whose territories the jurisdiction is exercised, and, in the absence of express agreement, are to be inferred from usage and from the circumstances of the case.

In connexion with this subject, it may be useful to quote Sir Henry Maine's remarks in his minute on Kathiawar[1]:—

'It may perhaps be worth observing that, according to the more precise language of modern publicists, "sovereignty" is divisible, but "independence" is not. Although the expression "partial independence" may be popularly used, it is technically incorrect. Accordingly, there may be found in India every shade and variety of sovereignty, but there is *only* one independent sovereign, the *British Government*. My reason for offering a remark which may perhaps appear pedantic is that the Indian Government seems to me to have occasionally exposed itself to misconstruction by admitting or denying the independence of particular States, when, in fact, it meant to speak of their sovereignty.

'The mode or degree in which sovereignty is distributed between the British Government and any given Native State is always a question of fact, which has to be separately decided in each case, and to which no general rules apply. In the more considerable instance, there is always some treaty, engagement, or sunnud to guide us to a conclusion, and then the only question which remains is, what has become of the sovereign rights which are *not mentioned in the Convention*? Did the British Government reserve them to itself, or did it intend to leave the Native Power in the enjoyment of them? In the case of Kattywar the few ambiguous documents which bear on the matter seem to me to point to no certain result, and I consider that the distribution of the sovereignty can only be collected from the *de facto* relations of these States with the British Government, from the course of action which has been followed by this Government towards them. Though we have to interpret this evidence ourselves, *it is in itself perfectly legitimate*.

[1] Minutes by Sir H. S. Maine, No. 22, at p. 37.

'It appears to me, therefore, that the Kattywar States have been permitted to enjoy several sovereign rights, of which the principal—and it is a well-known right of sovereignty—is immunity from foreign laws. Their chiefs have also been allowed to exercise (within limits) civil and criminal jurisdiction, and several of them have been in the exercise of a very marked (though minor) sovereign right—the right to coin money. But far the largest part of the sovereignty has obviously resided in practice with the British Government, and among the rights which it has exercised appears to me to be an almost unlimited right of interference for the better order of the States. I mean that, if the interferences which have already taken place be referred to principles, those principles would justify any amount of interposition, so long as we interpose in good faith for the advantage of the chiefs and people of Kattywar, and so long as we do not disturb the only unqualified sovereign right which these States appear to possess—the right to immunity from foreign laws.' [1]

From what has been said above it will be seen that the powers exercised by the British Government, or by the Government of India as its representative, in territories where lower types of government or civilization prevail, may vary both in nature and in extent between very wide limits. In some places there is merely the exercise of a personal jurisdiction over British subjects, or certain other limited classes of persons. In others the functions of external sovereignty are exercised or controlled. In others, again, a much larger share of the functions of sovereignty, both external and internal, has been taken over, and this share may be so large as to leave to the previous ruler of the territory, if such there be, nothing more than a bare, nominal, or dormant sovereignty.[2]

In dealing with the various positions thus arising, it is important to remember that different considerations will apply according as the position is approached from the point

[1] As to Kathiawar *see* the two cases decided in 1905 by the Judicial Committee, *Hemchand Devchand* v. *Azam Sakarlal Chkotamlal*, and *The Taluka of Kotda Sangani* v. *The State of Gondal*, A.C. [1906], p. 212; referred to above, p. 203.

[2] A curious illustration of the extent to which the exercise of sovereign rights can be claimed without the claim of territorial sovereignty is supplied by the treaty between the United States and the Republic of Panama with respect to the territory within the 'Canal Zone.'

of view of international law, or from the point of view of municipal law.

Where the external sovereignty of any State is exercised or controlled by the British Government, a third State will almost certainly claim to regard, and will, from an international point of view, be entitled to regard, the territory of the first State as being for many purposes practically British. Thus if persons in that territory made it a basis for raids on the territory of an adjoining foreign State, that State would hold the British Government accountable. And it would be no answer to say that the arrangements entered into by the British Government with the ruler of that territory preclude British interference in such cases. The reply would be, 'We know nothing of these arrangements, except that they debar us from obtaining protection or redress, except through you, and consequently we must treat the territory as practically British.' A similar position would arise if a subject of that foreign State were grossly ill-used within the territory, and were denied justice by the persons exercising authority there.

The view taken by municipal law is widely different. For the purposes of that law a territory must be either British or foreign, that is to say, not British, and a sharp line must be drawn between the two. In some cases it may be a difficult operation to draw this line, but it must be drawn by the courts and by the executive authorities as best they can. To allow the existence of a penumbra between British and non-British territory would cause endless confusion. The judicial and executive authorities must be in a position to say whether, for purposes of municipal law, a particular territory is *within* or *without* '*His Majesty's dominions*' or 'British India.' And the legislative authorities must be in a position to determine whether the legislation for such a territory is to be carried out through the ordinary legislative organs, or through the machinery recognized and supported by the Foreign Jurisdiction Acts. Again, important questions

of status may turn on the question whether the territory in which a man is born is British territory or not. To determine whether a particular territory is British or not, it may be necessary to look not merely to the powers exercised within it, but also to the manner in which, and the understandings on which, those powers have been acquired and are being exercised. Where the acquisition dates from long back, difficult questions may arise. But in the case of recent acquisitions there will usually be no serious difficulty in determining whether what has been acquired is merely a right to exercise certain sovereign powers within a particular tract, or whether there has been such a transfer of sovereignty over the tract as to convert it into British territory.

Conclusions as to extra-territorial powers of Governor-General.

The general conclusions appear to be :—

1. The extra-territorial powers of the Governor-General of India are much wider than the extra-territorial powers of the Indian Legislature, and are not derived from, though they may be regulated or restricted by, English or Indian Acts.

2. Those powers are exercisable within the territories of all the Native States of India. Whether they are exercisable within the territories of any State outside India is a question which depends on the arrangements in force with the Government of that State, and on the extent to which the powers of the Crown exercisable in pursuance of such arrangements have been delegated to the Governor-General.

3. The jurisdiction exercisable under those powers might be made to extend not only to British subjects and to subjects of the State within which the jurisdiction is exercised, but also to foreigners.

4. The classes of persons and cases to which jurisdiction actually applies depend on the agreement, if any, in force with respect to its exercise, and, in the absence of express agreement, on usage and the circumstances of the case, and may be defined, restricted, or extended accordingly by the instrument regulating the exercise of the jurisdiction.

APPENDIX I

CONSTITUTION OF THE LEGISLATIVE COUNCILS UNDER THE REGULATIONS OF NOVEMBER 1909 AS REVISED IN 1912

INDIA

Ex Officio.

The six Ordinary Members of the Governor-General's Council, the Commander-in-Chief, and the Lieutenant-Governor or Chief Commissioner of the province in which the Council sits . . .		8
Additional.		
Nominated members, of whom not more than 28 must be officials,[1] and of whom three, being non-officials, shall be selected respectively from the landholders of the Punjab, the Muhammadans of the Punjab, and the Indian Commercial Community		33
Elected Members, elected by		
(*a*) The Provincial Legislative Councils[2] .	13	
(*b*) The landholders of Madras, Bombay, Bengal, the United Provinces, Bihar and Orissa, and the Central Provinces	6	
(*c*) The Muhammadans of Madras, Bombay, Bengal, the United Provinces, and Bihar and Orissa	5	
(*d*) The Muhammadan landholders in the United Provinces or the Muhammadans of Bengal (at alternate elections) . .	1	
(*e*) The Chambers of Commerce, Calcutta and Bombay	2	
	—	27
Total . .		68
or, including the Governor-General .		69

MADRAS

Ex Officio.

Members of the Executive Council	3
Advocate-General	1

[1] Nine of these are to be officials representing provinces.
[2] These elections are made by the non-official members of the councils.

Additional.

Nominated members, of whom not more than 16 are to be officials, and one is to be a representative of Indian Commerce.		21
Nominated experts, who may be either officials or non-officials		2
Elected members, elected by		
(*a*) The Corporation of Madras . . .	1	
(*b*) Municipalities and District Boards . .	9	
(*c*) The University	1	
(*d*) The Landholders	5	
(*e*) The Planting Community . . .	1	
(*f*) Muhammadans	2	
(*g*) The Madras Chamber of Commerce . .	1	
(*h*) The Madras Trades Association . .	1	
	—	21
Total . . .		48
or, including the Governor . .		49

BOMBAY

Ex Officio.

Members of the Executive Council . . .	3
Advocate-General	1

Additional.

Nominated members, of whom not more than 14 are to be officials		21
Nominated experts, who may be either officials or non-officials		2
Elected members, elected by		
(*a*) The Corporation of Bombay . . .	1	
(*b*) Municipalities	4	
(*c*) District Boards	4	
(*d*) The University	1	
(*e*) The Landholders	3	
(*f*) Muhammadans	4	
(*g*) The Bombay Chamber of Commerce . .	1	
(*h*) The Karachi Chamber of Commerce . .	1	
(*i*) The Millowners' Associations of Bombay and Ahmedabad	1	
(*j*) The Indian Commercial Community . .	1	
	—	
Total . . .		
or, including the Governor . .		

BENGAL

Ex Officio.

Members of the Executive Council . . .		3

Additional.

Nominated members, not more than 16 to be officials and one to be a representative of the European Commercial Community outside Calcutta and Chittagong, and one of Indian Commerce . .		20
Nominated experts, who may be either officials or non-officials		2
Elected members, elected by		
(*a*) The Corporation of Calcutta . . .	1	
(*b*) Municipalities	5	
(*c*) District and Local Boards . . .	5	
(*d*) The University	1	
(*e*) The Landholders of the Presidency, Burdwan, Rajshahi and Dacca Divisions . .	4	
(*f*) Muhammadans	5	
(*g*) The Bengal Chamber of Commerce . .	2	
(*h*) The Calcutta Trades Association . .	1	
(*i*) The Chittagong Port Commissioners . .	1	
(*k*) Commissioners of the Corporation of Calcutta (excluding nominees of Government)	1	
(*l*) The Tea-planting Community . . .	1	
(*m*) Municipalities of the Chittagong Division or (at alternate elections) Landholders of the same Division	1	
	—	28
Total . . .		53
or, including the Governor . .		54

BIHAR AND ORISSA

Ex Officio.

Members of Executive Council	3

Additional.

Nominated members, not more than 15 to be officials	19
Nominated expert, who may be either an official or a non-official	1

Elected members, elected by

(*a*) Municipalities	5
(*b*) District Boards	5
(*c*) The Landholders	5
(*d*) Muhammadans	4
(*e*) The Planting Community	1
(*f*) The Mining Community	1

Total

or, including the Lieutenant-Governor

UNITED PROVINCES

Nominated members, not more than 20 to be officials, and one to be a representative of Indian commerce

Nominated experts, who may be officials or non-officials

Elected members, elected by

(*a*) Large Municipalities in rotation	4
(*b*) District Boards and Smaller Municipalities	9
(*c*) Allahabad University	1
(*d*) The Landholders	2
(*e*) Muhammadans	4
(*f*) The Upper India Chamber of Commerce	1

Total

or, including the Lieutenant-Governor

PUNJAB

Nominated members, not more than 10 to be officials

Nominated experts, who may be either officials or non-officials

Elected members, elected by

(*a*) The Punjab Chamber of Commerce	1
(*b*) The Punjab University	1
(*c*) Municipal and Cantonment Committees	3
(*d*) District Boards	3

Total

or, including the Lieutenant-Governor

BURMA

Nominated officials		6
Nominated non-officials		
(*a*) To represent the Burmese population	4	
(*b*) To represent the Indian and Chinese Communities	2	
(*c*) To represent other interests	2	
		8
Nominated experts, who may be either officials or non-officials		2
Elected by the Burma Chamber of Commerce		1
Total		17
or, including the Lieutenant-Governor		18

ASSAM

Nominated members, not more than 9 to be officials		13
Nominated expert, who may be either official or non-official		1
Elected members, elected by		
(*a*) Municipalities	2	
(*b*) Local Boards	2	
(*c*) The Landholders	2	
(*d*) Muhammadans	2	
(*e*) The Tea-planting Community	3	
		11
Total		25
or, including the Chief Commissioner		26

CENTRAL PROVINCES

Nominated members, not more than 10 to be officials, and 3 to be non-officials resident in Berar		17
Nominated expert, who may be either official or non-official		1
Elected members, elected by		
(*a*) Municipal Committees	3	
(*b*) District Councils	2	
(*c*) The Landholders	2	
		7
Total		25
or, including the Chief Commissioner		26

APPENDIX II

RULES OF BUSINESS OF NOVEMBER 15, 1909

The 15th November, 1909

No. 23.—In exercise of the powers conferred by section 5 of the Indian Councils Act, 1909, the Governor-General in Council has, with the sanction of the Secretary of State for India in Council, made the following rules authorizing, at any meeting of the Legislative Council of the Governor-General, the discussion of the annual financial statement of the Governor-General in Council.

RULES FOR THE DISCUSSION OF THE ANNUAL FINANCIAL STATEMENT IN THE LEGISLATIVE COUNCIL OF THE GOVERNOR-GENERAL

Definitions

1. In these rules—

(1) 'President' means—

(*a*) the Governor-General, or

(*b*) the President nominated by the Governor-General in Council under section 6 of the Indian Councils Act, 1861, or

(*c*) the Vice-President appointed by the Governor-General under section 4 of the Indian Councils Act, 1909, or

(*d*) the Member appointed to preside under rule 27;

(2) 'Member in charge' means the Member of the Council of the Governor-General to whom is allotted the business of the Department of the Government of India to which the subject under discussion belongs, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules;

(3) 'Finance Member' means the Member in charge of the Finance Department of the Government of India;

(4) 'Secretary' means the Secretary to the Government of India in the Legislative Department, and includes the Deputy-Secretary and every person for the time being exercising the functions of the Secretary;

(5) 'Financial Statement' means the preliminary financial estimates of the Governor-General in Council for the financial year next following; and

(6) 'Budget' means the Financial Statement as finally settled by the Governor-General in Council.

A.—The Financial Statement

General order of discussion.

2.—(1) On such day as may be appointed in this behalf by the Governor-General, the Financial Statement with an explanatory memorandum shall be presented to the Council every year by the Finance Member, and a printed copy shall be given to every Member.

(2) No discussion of the Financial Statement shall be permitted on such day.

3.—(1) On such later day as may be appointed in this behalf by the Governor-General, the first stage of the discussion of the Financial Statement in Council shall commence.

(2) On this day, after the Finance Member has stated any changes in the figures of the Financial Statement which circumstances may since have rendered necessary and has made any explanations of that Statement which he may think fit, any Member shall be at liberty to move any resolution entered in his name in the list of business relating to any alteration in taxation, any new loan or any additional grant to Local Governments proposed or mentioned in such Statement or explanatory memorandum, and the Council shall thereupon proceed to discuss each such resolution in the manner hereinafter prescribed.

4.—(1) The second stage of the discussion of the Financial Statement shall commence as soon as may be after all the resolutions which may be moved as aforesaid have been disposed of.

(2) In this stage each head or group of heads specified in the statement contained in the Schedule appended to these rules as being open to discussion, shall be considered separately according to such grouping as the Member in charge may determine.

(3) The consideration of a particular head or group of heads shall be introduced by the Member in charge with such explanations, supplementing the information contained in the Financial Statement, as may appear to him to be necessary.

(4) Any Member shall then be at liberty to move any resolution relating to any question covered by any such head or group of heads which may be entered in his name in the list of business, and the Council shall thereupon proceed to discuss every such resolution in the manner hereinafter prescribed.

Subjects excluded from discussion.

5. No discussion shall be permitted in regard to any of the following subjects, namely :—

(*a*) any subject removed from the cognizance of the Legislative Council of the Governor-General by section 22 of the Indian Councils Act, 1861 [1]; or

[1] See Digest, s. 63.

(*b*) any matter affecting the relations of His Majesty's Government or of the Governor-General in Council with any Foreign State or any Native State in India; or

(*c*) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

Resolutions.

6. No resolution shall be moved which does not comply with the following conditions, namely :—

(*a*) it shall be in the form of a specific recommendation addressed to the Governor-General in Council;

(*b*) it shall be clearly and precisely expressed and shall raise a definite issue;

(*c*) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity;

(*d*) it shall not challenge the accuracy of the figures of the Financial Statement; and

(*e*) it shall be directly relevant to some entry in the Financial Statement.

7. A Member who wishes to move a resolution shall give notice in writing to the Secretary at least two clear days before the commencement of the stage of the discussion to which the resolution relates, and shall together with the notice submit a copy of the resolution which he wishes to move.

8. The President may disallow any resolution or part of a resolution without giving any reason therefor other than that in his opinion it cannot be moved consistently with the public interests or that it should be moved in the Legislative Council of a Local Government.

9.—(1) No discussion in Council shall be permitted in respect of any order of the President under rule 8.

(2) A resolution that has been disallowed shall not be entered in the proceedings of the Council.

10. Resolutions admitted by the President shall be entered in the list of business in such order as he may direct.

Discussion of Resolutions.

11.—(1) After the mover of a resolution has spoken, other Members may speak to the motion in such order as the President may direct, and thereafter the mover may speak once by way of reply.

(2) No Member other than the mover and the Member in charge shall speak more than once to any motion except with the

permission of the President for the purpose of making an explanation.

12. No speech, except with the permission of the President, shall exceed fifteen minutes in duration:

Provided that the mover of a resolution, when moving the same, and the Member in charge may speak for thirty minutes.

13. The discussion of a resolution shall be limited to the subject of the resolution, and shall not extend to any matter as to which a resolution may not be moved.

14. A Member who has moved a resolution may withdraw the same unless some Member desires that it be put to the vote.

15. When, in the opinion of the President, a resolution has been sufficiently discussed, he may close the discussion by calling upon the mover to reply and the Member in charge to submit any final observations which he may wish to make:

Provided that the President may in all cases address the Council before putting the question to the vote.

16. If any resolution involves many points, the President at his discretion may divide it, so that each point may be determined separately.

17.—(1) Every question shall be resolved in the affirmative or in the negative according to the majority of votes.

(2) Votes may be taken by voices or by division and shall be taken by division if any member so desires.

(3) The President shall determine the method of taking votes by division.

18.—(1) The President may assign such time as with due regard to the public interests he may consider reasonable for the discussion of resolutions or of any particular resolution.

(2) Every resolution which shall not have been put to the vote within the time so assigned shall be considered to have been withdrawn.

19. Every resolution, if carried, shall have effect only as a recommendation to the Governor-General in Council.

20. When a question has been discussed at a meeting of the Council, or when a resolution has been disallowed under rule 8 or withdrawn under rule 14, no resolution raising substantially the same question shall be moved within one year.

B.—The Budget

21.—(1) On or before the 24th day of March in every year the Budget shall be presented to the Council by the Finance Member, who shall describe the changes that have been made in the figures of the Financial Statement, and shall explain why any resolutions passed in Council have not been accepted.

(2) A printed copy of the Budget shall be given to each Member.

22.—(1) The general discussion of the Budget in Council shall take place on such later day as may be appointed by the President for this purpose.

(2) At such discussion, any Member shall be at liberty to offer any observations he may wish to make on the Budget, but no Member shall be permitted to move any resolution in regard thereto, nor shall the Budget be submitted to the vote of the Council.

(3) It shall be open to the President, if he thinks fit, to prescribe a time limit for speeches.

23. The Finance Member shall have the right of reply, and the discussion shall be closed by the President making such observations as he may consider necessary.

C.—General

24.—(1) Every Member shall speak from his place, shall rise when he speaks, and shall address the chair.

(2) At any time, if the President rises, any Member speaking shall immediately resume his seat.

25.—(1) Any Member may send his speech in print to the Secretary not less than two clear days before the day fixed for the discussion of a resolution, with as many copies as there are Members, and the Secretary shall cause one of such copies to be supplied to every Member.

(2) Any such speech may at the discretion of the President be taken as read.

26.—(1) The President shall preserve order, and all points of order shall be decided by him.

(2) No discussion on any point of order shall be allowed unless the President thinks fit to take the opinion of the Council thereon.

(3) Any Member may at any time submit a point of order to the decision of the President.

(4) The President shall have all powers necessary for the purpose of enforcing his decisions.

27. The Governor-General may appoint a Member of the Council to preside in his place, or in that of the Vice-President, on any occasion on which the Financial Statement or the Budget or any portion thereof is discussed in the Council.

28. The President, for sufficient reason, may suspend any of the foregoing rules.

THE SCHEDULE

Heads open to or excluded from discussion under rule 4.

REVENUE.		EXPENDITURE.	
Heads open to discussion.	*Heads not open to discussion.*	Heads open to discussion.	*Heads not open to discussion.*
I.—Land Revenue. II.—Opium. III.—Salt. V.—Excise. VI.—Provincial Rates. IX.—Forests. X.—Registration. XII.—Interest. XIII.—Post Office. XIV.—Telegraph. XV.—Mint. XVI-B.—Jails. XVII.—Police. XIX.—*Education.* XX.—Medical. XXI.—Scientific & other Minor Departments. XXII.—Receipts in aid of Superannuation, &c. XXIII.—Stationery and Printing. XXIV.—Exchange. XXV.—Miscellaneous. XXVI.—State Railways. XXVIII.—Subsidized Companies. XXIX.—Irrigation, Major Works. XXX.—Minor Works and Navigation. XXXI.—*Civil Works.*	*IV.—Stamps.* *VII.—Customs.* *VIII.—Assessed Taxes.* *XI.—Tributes from Native States.* *XVI-A.—Courts.*[1] *XXII.—Army.* *XXIII.—Marine.* *XXIV.—Military Works.* *All purely Provincial revenue and revenue accruing from divided heads in Provinces possessing Legislative Councils.*	1.—Refunds and drawbacks. 3.—Land Revenue. 4.—Opium. 5.—Salt. 6.—Stamps. 7.—Excise. 8.—Provincial Rates. 9.—*Customs.* 10.—Assessed Taxes. 11.—Forests. 12.—Registration. 14.—Interest on *other obligations.* 15.—Post Office. 16.—Telegraphs. 17.—Mint. 18.—General Administration.[2] 19-A.—Courts of Law.[3] 19-B.—Jails. 20.—Police. 22.—Education. 24.—Medical. 26.—Scientific and other Minor Departments. 28.—Civil Furlough and Absentee Allowances. 29. — Superannuation Allowances and Pensions. 30.—Stationery and Printing. 31.—Exchange. 32.—Miscellaneous.	2.—*Assignments and Compensations.* 13.—*Interest on debt.* 23. — *Ecclesiastical.* 25.—*Political.* 27.—*Territorial and Political Pensions.* 38.—*State Railways.* 42.—*Major Works. Interest on debt.* 46.—*Army.* 46-A.—*Marine.* 47. — *Military Works and Defence.* 47-A. — *Special Defence Charges.* *All statutory charges.* *All purely Provincial expenditure and expenditure accruing under divided heads in Provinces possessing Legislative Councils.*

[1] Mainly Court-fees and fines.

[2] These heads include certain statutory charges, which will be excluded from debate.

[3] This head deals purely with interest, sinking funds, and annuities.

Revenue.		Expenditure.	
Heads open to discussion.	*Heads not open to discussion.*	Heads open to discussion.	*Heads not open to discussion.*
		33.—Famine Relief. 34.—Construction of Protective Railways. 35.—Construction of Protective Irrigation Works. 36.—Reduction or Avoidance of Debt. 40.—Subsidized Companies; Land, &c. 41.—Miscellaneous Railway Expenditure. 42.—Irrigation: Major Works—Working Expenses. 43.—Minor Works and Navigation. 45.—Civil Works. 48.—State Railways; Capital Expenditure not charged to Revenue. 49.—Irrigation Works; Capital Expenditure not charged to Revenue.	

The 15th November, 1909

No. 24.—In exercise of the powers conferred by section 5 of the Indian Councils Act, 1909, the Governor-General in Council has, with the sanction of the Secretary of State for India in Council, made the following rules authorizing at any meeting of the Legislative Council of the Governor-General the discussion of any matter of general public interest.

RULES FOR THE DISCUSSION OF MATTERS OF GENERAL PUBLIC INTEREST IN THE LEGISLATIVE COUNCIL OF THE GOVERNOR-GENERAL

Definitions.

1. In these rules—

(1) 'President' means—

(*a*) the Governor-General, or

(*b*) the President nominated by the Governor-General in Council under section 6 of the Indian Councils Act, 1861, or

(*c*) the Vice-President appointed by the Governor-General under section 4 of the Indian Councils Act, 1909, or

(*d*) the Member appointed to preside under rule 27;

(2) 'Member in charge' means the Member of the Council of the Governor-General to whom is allotted the business of the Department of the Government of India to which the subject under discussion belongs, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules; and

(3) 'Secretary' means the Secretary to the Government of India in the Legislative Department, and includes the Deputy-Secretary and every person for the time being exercising the functions of the Secretary.

Matters open to discussion.

2. Any matter of general public interest may be discussed in the Council subject to the following conditions and restrictions.

3. No such discussion shall be permitted in regard to any of the following subjects, namely :—

(*a*) any subject removed from the cognizance of the Legislative Council of the Governor-General by section 22 of the Indian Councils Act, 1861 [1]; or

(*b*) any matter affecting the relations of His Majesty's Government or of the Governor-General in Council with any Foreign State or any Native State in India; or

(*c*) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

[1] See Digest, s. 63.

Resolutions.

4. Subject to the restrictions contained in rule 3, any Member may move a resolution relating to a matter of general public interest :

Provided that no resolution shall be moved which does not comply with the following conditions, namely :—

(*a*) it shall be in the form of a specific recommendation addressed to the Governor-General in Council ;

(*b*) it shall be clearly and precisely expressed and shall raise a definite issue ; and

(*c*) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity.

5. A Member who wishes to move a resolution shall give notice in writing to the Secretary, at least fifteen clear days before the meeting of the Council at which he desires to move the same, and shall together with the notice submit a copy of the resolution which he wishes to move :

Provided that the President may allow a resolution to be moved with shorter notice than fifteen days, and may, in any case, require longer notice or may extend the time for moving the resolution.

6.—(1) The Secretary shall submit every resolution of which notice has been given to him in accordance with rule 5 to the President, who may either admit it or, when any resolution is not framed in accordance with rule 4, cause it to be returned to the Member concerned for the purpose of amendment.

(2) If the Member does not, within such time as the President may fix in this behalf, re-submit the resolution duly amended, the resolution shall be deemed to have been withdrawn.

7. The President may disallow any resolution or part of a resolution without giving any reason therefor other than that in his opinion it cannot be moved consistently with the public interests or that it should be moved in the Legislative Council of a Local Government.

8.—(1) No discussion in Council shall be permitted in respect of any order of the President under rule 6 or rule 7.

(2) A resolution which has been disallowed shall not be entered in the proceedings of the Council.

9. Resolutions admitted by the President shall be entered in the list of business for the day in the order in which they are received by the Secretary :

Provided that the President may give priority to any resolution which he may consider to be of urgent public interest, or postpone the moving of any resolution.

Discussion of Resolutions.

10. The discussion of resolutions shall take place after all the other business of the day has been concluded.

11.—(1) After the mover of a resolution has spoken, other Members may speak to the motion in such order as the President may direct, and thereafter the mover may speak once by way of reply.

(2) No Member other than the mover and the Member in charge shall speak more than once to any motion, except, with the permission of the President, for the purpose of making an explanation.

12. No speech, except with the permission of the President, shall exceed fifteen minutes in duration:

Provided that the mover of a resolution, when moving the same, and the Member in charge may speak for thirty minutes.

13.—(1) Every Member shall speak from his place, shall rise when he speaks, and shall address the chair.

(2) At any time, if the President rises, any Member speaking shall immediately resume his seat.

14.—(1) Any Member may send his speech in print to the Secretary not less than two clear days before the day fixed for the discussion of a resolution, with as many copies as there are Members, and the Secretary shall cause one of such copies to be supplied to each Member.

(2) Any such speech may at the discretion of the President be taken as read.

15. The discussion of a resolution shall be limited to the subject of the resolution, and shall not extend to any matter as to which a resolution may not be moved.

16. When a resolution is under discussion any Member may, subject to all the restrictions and conditions relating to resolutions specified in rules 3 and 4, move an amendment to such resolution:

Provided that an amendment may not be moved which has merely the effect of a negative vote.

17.—(1) If a copy of such amendment has not been sent to the Secretary at least three clear days before the day fixed for the discussion of the resolution, any Member may object to the moving of the amendment; and such objection shall prevail unless the President in exercise of his power to suspend any of these rules allows the amendment to be moved.

(2) The Secretary shall, if time permits, cause every amendment to be printed and send a copy for the information of each Member.

18. A Member who has moved a resolution or an amendment of a resolution may withdraw the same unless some Member desires that it be put to the vote.

19. When, in the opinion of the President, a resolution and any amendment thereto have been sufficiently discussed, he may close the discussion by calling upon the mover to reply and the Member in charge to submit any final observations which he may wish to make :

Provided that the President may in all cases address the Council before putting the question to the vote.

20.—(1) When an amendment to any resolution is moved, or when two or more such amendments are moved, the President shall, before taking the sense of the Council thereon, state or read to the Council the terms of the original motion and of the amendment or amendments proposed.

(2) It shall be in the discretion of the President to put first to the vote either the original motion or any of the amendments which may have been brought forward.

21. If any resolution involves many points, the President at his discretion may divide it, so that each point may be determined separately.

22.—(1) Every question shall be resolved in the affirmative or in the negative according to the majority of votes.

(2) Votes may be taken by voices or by division and shall be taken by division if any Member so desires.

(3) The President shall determine the method of taking votes by division.

General.

23.—(1) The President may assign such time as, with due regard to the public interests, he may consider reasonable for the discussion of resolutions or of any particular resolution.

(2) Every resolution which shall not have been put to the vote within the time so assigned shall be considered to have been withdrawn

24. Every resolution, if carried, shall have effect only as a recommendation to the Governor-General in Council.

25. When a question has been discussed at a meeting of the Council, or when a resolution has been disallowed under rule 7 or withdrawn under rule 18, no resolution or amendment raising substantially the same question shall be moved within one year.

26.—(1) The President shall preserve order, and all points of order shall be decided by him.

(2) No discussion on any point of order shall be allowed unless the President thinks fit to take the opinion of the Council thereon.

(3) Any Member may at any time submit a point of order to the decision of the President.

(4) The President shall have all powers necessary for the purpose of enforcing his decisions.

27. The Governor-General may appoint a Member of the Council to preside in his place, or in that of the Vice-President, on any occasion on which a matter of general public interest is discussed in the Council.

28. The President, for sufficient reason, may suspend any of the foregoing rules.

The 15th November, 1909

No. 25.—In exercise of the power conferred by section 5 of the Indian Councils Act, 1909, the Governor-General in Council has, with the sanction of the Secretary of State for India in Council, made the following rules authorizing the asking of questions at any meeting of the Legislative Council of the Governor-General.

RULES FOR THE ASKING OF QUESTIONS IN THE LEGISLATIVE COUNCIL OF THE GOVERNOR-GENERAL

1. In these rules—

(1) 'President' means—

(*a*) the Governor-General, or

(*b*) the President appointed under section 6 of the Indian Councils Act, 1861, or

(*c*) the Vice-President appointed by the Governor-General under section 4 of the Indian Councils Act, 1909.

(2) 'Member in charge' means the Member of the Council of the Governor-General to whom is allotted the business of the Department of the Government of India to which the subject of the question belongs, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules; and

(3) 'Secretary' means the Secretary to the Government of India in the Legislative Department, and includes the Deputy-Secretary and every person for the time being exercising the functions of the Secretary.

2. Any question may be asked by any Member subject to the following conditions and restrictions.

3. No question shall be permitted in regard to any of the following subjects, namely :—

(*a*) any matter affecting the relations of His Majesty's Government or of the Governor-General in Council with any Foreign State or with any Native State in India, or

(*b*) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

4. No question shall be asked unless it complies with the following conditions, namely :—

(*a*) it shall be so framed as to be merely a request for information,

(*b*) it shall not be of excessive length,

(*c*) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity, and

(*d*) it shall not ask for an expression of an opinion or the solution of a hypothetical proposition.

5. In matters which are or have been the subject of controversy between the Governor-General in Council and the Secretary of State or a Local Government no question shall be asked except as to matters of fact, and the answer shall be confined to a statement of facts.

6. A Member who wishes to ask a question shall give notice in writing to the Secretary at least ten clear days before the meeting of the Council at which he desires to put the question and shall, together with the notice, submit a copy of the question which he wishes to ask :

Provided that the President may allow a question to be put with shorter notice than ten days and may in any case require longer notice or may extend the time for answering a question.

7. (1) The Secretary shall submit every question of which notice has been given to him in accordance with rule 6 to the President, who may either allow it or, when any question is not framed in accordance with rules 4 and 5, cause it to be returned to the Member concerned for the purpose of amendment.

(2) If the Member does not, within such time as the President may fix in this behalf, re-submit the question duly amended, the question shall be deemed to have been withdrawn.

8. The President may disallow any question, or any part of a question, without giving any reason therefor other than that in his opinion it cannot be answered consistently with the public interests or that it should be put in the Legislative Council of a Local Government.

9. No discussion in Council shall be permitted in respect of any order of the President under rule 7 or rule 8.

10. Questions which have been allowed shall be entered in the list of business for the day and shall be put in the order in which they stand in the list before any other business is entered upon at the meeting.

11. Questions shall be put and answers given in such manner as the President may in his discretion determine.

12. Any Member who has asked a question may put a supplementary question for the purpose of further elucidating any

matter of fact regarding which a request for information has been made in his original question.

13. The Member in charge may decline to answer a supplementary question without notice, in which case the supplementary question may be put in the form of a fresh question at a subsequent meeting of the Council.

14. These rules, except rules 6 and 7, apply also to supplementary questions:

Provided that the President may disallow any supplementary question without giving any reason therefor.

15. The President may rule that an answer to a question in the list of business for the day shall be given on the ground of public interest even though the question may have been withdrawn.

16. No discussion shall be permitted in respect of any question or of any answer given to a question.

17. All questions asked and the answers given shall be entered in the proceedings of the Council:

Provided that no question which has been disallowed by the President shall be so entered.

18. The President may assign such time as, with due regard to the public interests, he may consider reasonable for the putting and answering of questions.

APPENDIX III

CORRESPONDENCE PRECEDING THE CORONATION DURBAR

No. 4

GOVERNMENT OF INDIA

HOME DEPARTMENT

To the Right Honourable the Marquess of Crewe, K.G., His Majesty's Secretary of State for India.

(Secret.) Simla,
My Lord Marquess, 25th August, 1911.

We venture in this Despatch to address Your Lordship on a most important and urgent subject, embracing two questions of great political moment which are in our opinion indissolubly linked together. This subject has engaged our attention for some time past, and the proposals which we are about to submit for Your Lordship's consideration are the result of our mature deliberation. We shall in the first place attempt to set forth the circumstances which have induced us to frame these proposals at this particular juncture, and then proceed to lay before Your Lordship the broad general features of our scheme.

2. That the Government of India should have its seat in the same city as one of the chief Provincial Governments, and moreover in a city geographically so ill-adapted as Calcutta to be the capital of the Indian Empire, has long been recognised to be a serious anomaly. We need not stop to recall the circumstances in which Calcutta rose to its present position. The considerations which explain its original selection as the principal seat of Government have long since passed away with the consolidation of British rule throughout the Peninsula and the development of a great inland system of railway communication. But it is only in the light of recent developments, constitutional and political, that the drawbacks of the existing arrangement and the urgency of a change have been fully realised. On the one hand the almost incalculable importance of the part which can already safely be predicted for the Imperial Legislative Council in the shape it has assumed under the Indian Councils Act of 1909, renders the removal of the

capital to a more central and easily accessible position practically imperative. On the other hand, the peculiar political situation which has arisen in Bengal since the Partition makes it eminently desirable to withdraw the Government of India from its present Provincial environment, while its removal from Bengal is an essential feature of the scheme we have in view for allaying the ill-feeling aroused by the Partition amongst the Bengali population. Once the necessity of removing the seat of the Supreme Government from Bengal established, as we trust it may be by the considerations we propose to lay before Your Lordship, there can be, in our opinion, no manner of doubt as to the choice of the new capital or as to the occasion on which that choice should be announced. On geographical, historical, and political grounds, the capital of the Indian Empire should be at Delhi, and the announcement that the transfer of the seat of Government to Delhi has been sanctioned should be made by His Majesty the King-Emperor at the forthcoming Imperial Durbar in Delhi itself.

3. The maintenance of British rule in India depends on the ultimate supremacy of the Governor-General in Council, and the Indian Councils Act of 1909 itself bears testimony to the impossibility of allowing matters of vital concern to be decided by a majority of non-official votes in the Imperial Legislative Council. Nevertheless it is certain that, in the course of time, the just demands of Indians for a larger share in the government of the country will have to be satisfied, and the question will be how this devolution of power can be conceded without impairing the supreme authority of the Governor-General in Council. The only possible solution of the difficulty would appear to be gradually to give the Provinces a larger measure of self-government, until at last India would consist of a number of administrations, autonomous in all provincial affairs, with the Government of India above them all, and possessing power to interfere in cases of misgovernment, but ordinarily restricting their functions to matters of Imperial concern. In order that this consummation may be attained, it is essential that the Supreme Government should not be associated with any particular Provincial Government. The removal of the Government of India from Calcutta is therefore a measure which will, in our opinion, materially facilitate the growth of Local self-government on sound and safe lines. It is generally recognized that the capital of a great central Government should be separate and independent, and effect has been given to this principle in the United States, Canada, and Australia.

4. The administrative advantages of the transfer would be scarcely less valuable than the political. In the first place, the development of the Legislative Councils has made the withdrawal of the Supreme Council and the Government of India from the

influence of local opinion a matter of ever-increasing urgency. Secondly, events in Bengal are apt to react on the Viceroy and the Government of India, to whom the responsibility for them is often wrongly attributed. The connexion is bad for the Government of India, bad for the Bengal Government, and unfair to the other Provinces, whose representatives view with great and increasing jealousy the predominance of Bengal. Further, public opinion in Calcutta is by no means always the same as that which obtains elsewhere in India, and it is undesirable that the Government of India should be subject exclusively to its influence.

5. The question of providing a separate capital for the Government of India has often been debated, but generally with the object of finding a site where that Government could spend all seasons of the year. Such a solution would of course be ideal, but it is impracticable. The various sites suggested are either difficult of access or are devoid of historical associations. Delhi is the only possible place. It has splendid communications, its climate is good for seven months in the year, and its salubrity could be ensured at a reasonable cost. The Government of India would therefore be able to stay in Delhi from the 1st of October to the 1st of May, whilst owing to the much greater proximity the annual migration to and from Simla could be reduced in volume, would take up much less time and be far less costly. Some branches of the administration, such as Railways and Posts and Telegraphs, would obviously derive special benefit from the change to such a central position, and the only Department which, as far as we can see, might be thought to suffer some inconvenience, would be that of Commerce and Industry, which would be less closely in touch at Delhi with the commercial and industrial interests centred in Calcutta. On the other hand that Department would be closer to the other commercial centres of Bombay and Karachi, whose interests are sometimes opposed to those of Calcutta, and would thus be in a better position to deal impartially with the railway and commercial interests of the whole of India.

6. The political advantages of the transfer are impossible to over-estimate. Delhi is still a name to conjure with. It is intimately associated in the minds of the Hindus with sacred legends which go back even beyond the dawn of history. It is in the plain of Delhi that the Pandava princes fought out with the Kurawa the epic struggle recorded in the *Mahabharata*, and celebrated on the banks of the Jumna the famous sacrifice which consecrated their title to Empire. The Purana Kila still marks the site of the city which they founded and called Indraprastha, barely three miles from the south gate of the modern city of Delhi. To the Mahommedans it would be a source of unbounded gratification to see the ancient capital of the Moguls restored to its proud position as the seat of Empire. Throughout India, as far south as the Mahommedan conquest extended, every walled town has

its 'Delhi gate', and among the masses of the people it is still revered as the seat of the former Empire. The change would strike the imagination of the people of India as nothing else could do, would send a wave of enthusiasm throughout the country, and would be accepted by all as the assertion of an unfaltering determination to maintain British rule in India. It would be hailed with joy by the Ruling Chiefs and the races of Northern India, and would be warmly welcomed by the vast majority of Indians throughout the continent.

7. The only serious opposition to the transfer which may be anticipated, may, we think, come from the European commercial community of Calcutta, who might, we fear, not regard the creation of a Governorship of Bengal as altogether adequate compensation for the withdrawal of the Government of India. The opposition will be quite intelligible, but we can no doubt count upon their patriotism to reconcile them to a measure which would greatly contribute to the welfare of the Indian Empire. The Bengalis might not, of course, be favourably disposed to the proposal if it stood alone, for it will entail the loss of some of the influence which they now exercise owing to the fact that Calcutta is the headquarters of the Government of India. But, as we hope presently to show, they should be reconciled to the change by other features of our scheme which are specially designed to give satisfaction to Bengali sentiment. In these circumstances we do not think that they would be so manifestly unreasonable as to oppose it, and if they did we might confidently expect that their opposition would raise no echo in the rest of India.

8. Absolutely conclusive as these general considerations in favour of the transfer of the capital from Calcutta to Delhi in themselves appear to us to be, there are further special considerations arising out of the present political situation in Bengal and Eastern Bengal which, in our opinion, render such a measure peculiarly opportune at such a moment, and to these we would now draw Your Lordship's earnest attention.

9. Various circumstances have forced upon us the conviction that the bitterness of feeling engendered by the Partition of Bengal is very widespread and unyielding, and that we are by no means at an end of the troubles which have followed upon that measure. Eastern Bengal and Assam has, no doubt, benefited greatly by the Partition, and the Mahommedans of that Province, who form a large majority of the population, are loyal and contented; but the resentment amongst the Bengalis in both provinces of Bengal, who hold most of the land, fill the professions, and exercise a preponderating influence in public affairs, is as strong as ever, though somewhat less vocal.

10. The opposition to the Partition of Bengal was at first based mainly on sentimental grounds, but, as we shall show later in discussing the proposed modification of the Partition, since the

enlargement of the Legislative Councils and especially of the representative element in them, the grievance of the Bengali has become much more real and tangible, and is likely to increase instead of to diminish. Every one with any true désire for the peace and prosperity of this country must wish to find some manner of appeasement, if it is in any way possible to do so. The simple rescission of the Partition, and a reversion to the *status quo ante* are manifestly impossible both on political and on administrative grounds. The old province of Bengal was unmanageable under any form of Government; and we could not defraud the legitimate expectations of the Mahommedans of Eastern Bengal, who form the bulk of the population of that province, and who have been loyal to the British Government throughout the troubles, without exposing ourselves to the charge of bad faith. A settlement to be satisfactory and conclusive must—

(1) provide convenient administrative units;
(2) satisfy the legitimate aspirations of the Bengalis;
(3) duly safeguard the interests of the Mahommedans of Eastern Bengal, and generally conciliate Mahommedan sentiment; and
(4) be so clearly based upon broad grounds of political and administrative expediency as to negative any presumption that it has been exacted by clamour or agitation.

11. If the headquarters of the Government of India be transferred from Calcutta to Delhi, and if Delhi be thereby made the Imperial capital, placing the city of Delhi and part of the surrounding country under the direct administration of the Government of India, the following scheme, which embraces three interdependent proposals, would appear to satisfy all these conditions:

I. To re-unite the five Bengali-speaking divisions, viz. the Presidency, Burdwan, Dacca, Rajshahi and Chittagong divisions, forming them into a Presidency to be administered by a Governor in Council. The area of the province will be approximately 70,000 square miles, and the population about 42,000,000.

II. To create a Lieutenant-Governorship in Council to consist of Bihar, Chota Nagpur, and Orissa, with a Legislative Council and a capital at Patna. The area of the province would be approximately 113,000 square miles, and the population about 35,000,000.

III. To restore the Chief Commissionership of Assam. The area of that province would be about 56,000 square miles, and the population about 5,000,000.

12. We elaborated at the outset our proposal to make Delhi the future capital of India, because we consider this the key-stone of the whole project, and hold that according as it is accepted

or not, our scheme must stand or fall. But we have still to discuss in greater detail the leading features of the other part of our scheme.

13. Chief amongst them is the proposal to constitute a Governorship in Council for Bengal. The history of the Partition dates from 1902. Various schemes of territorial redistribution were at that time under consideration, and that which was ultimately adopted had at any rate the merit of fulfilling two of the chief purposes which its authors had in view. It relieved the overburdened administration of Bengal, and it gave the Mahommedan population of Eastern Bengal advantages and opportunities of which they had perhaps hitherto not had their fair share. On the other hand, as we have already pointed out, it was deeply resented by the Bengalis. No doubt sentiment has played a considerable part in the opposition offered by the Bengalis, and, in saying this, we by no means wish to underrate the importance which should be attached to sentiment even if it be exaggerated. It is, however, no longer a matter of mere sentiment, but rather, since the enlargement of the Legislative Councils, one of undeniable reality. In pre-reform scheme days the non-official element in these Councils was small. The representation of the people has now been carried a long step forward, and in the Legislative Councils of both the Provinces of Bengal and Eastern Bengal the Bengalis find themselves in a minority, being outnumbered in the one by Biharis and Ooriyas, and in the other by the Mahommedans of Eastern Bengal and the inhabitants of Assam. As matters now stand, the Bengalis can never exercise in either province that influence to which they consider themselves entitled by reason of their numbers, wealth, and culture. This is a substantial grievance which will be all the more keenly felt in the course of time, as the representative character of the Legislative Councils increases and with it the influence which these assemblies exercise upon the conduct of public affairs. There is therefore only too much reason to fear that, instead of dying down, the bitterness of feeling will become more and more acute.

14. It has frequently been alleged in the Press that the Partition is the root cause of all recent troubles in India. The growth of political unrest in other parts of the country and notably in the Deccan before the Partition of Bengal took place disproves that assertion, and we need not ascribe to the Partition evils which have not obviously flowed from it. It is certain, however, that it is, in part at any rate, responsible for the growing estrangement which has now unfortunately assumed a very serious character in many parts of the country between Mahommedans and Hindus. We are not without hope that a modification of the Partition, which we now propose, will, in some degree at any rate, alleviate this most regrettable antagonism.

15. To sum up, the results anticipated from the Partition have not been altogether realized, and the scheme as designed and executed could only be justified by success. Although much good work has been done in Eastern Bengal and Assam, and the Mahommedans of that Province have reaped the benefit of a sympathetic administration closely in touch with them, those advantages have been in a great measure counterbalanced by the violent hostility which the Partition has aroused amongst the Bengalis. For the reasons we have already indicated, we feel bound to admit that the Bengalis are labouring under a sense of real injustice which we believe it would be sound policy to remove without further delay. The Durbar of December next affords a unique occasion for rectifying what is regarded by Bengalis as a grievous wrong.

16. Anxious as we are to take Bengali feeling into account, we cannot overrate the importance of consulting at the same time the interests and sentiments of the Mahommedans of Eastern Bengal. It must be remembered that the Mahommedans of Eastern Bengal have at present an overwhelming majority in point of population, and that if the Bengali-speaking divisions were amalgamated on the lines suggested in our scheme, the Mahommedans would still be in a position of approximate numerical equality with, or possibly of small superiority over, the Hindus. The future province of Bengal, moreover, will be a compact territory of quite moderate extent. The Governor in Council will have ample time and opportunity to study the needs of the various communities committed to his charge. Unlike his predecessors, he will have a great advantage in that he will find ready to hand at Dacca a second capital, with all the conveniences of ordinary provincial head-quarters. He will reside there from time to time, just as the Lieutenant-Governor of the United Provinces frequently resides in Lucknow, and he will in this way be enabled to keep in close touch with Mahommedan sentiments and interests. It must also be borne in mind that the interests of the Mahommedans will be safeguarded by the special representation they enjoy in the Legislative Councils; while as regards representation on local bodies they will be in the same position as at present. We need not therefore trouble your Lordship with the reasons why we have discarded the suggestion that a Chief Commissionership, or a semi-independent Commissionership within the new province, might be created at Dacca.

17. We regard the creation of a Governorship in Council of Bengal as a very important feature of our scheme. It is by no means a new one. The question of the creation of the Governorship was fully discussed in 1867 to 1868 by the Secretary of State and the Government of India, and a Committee was formed, on the initiative of Sir Stafford Northcote, to consider it and that of the transfer of the capital elsewhere. In the somewhat

voluminous correspondence of the past the most salient points that emerge are :—

(i.) That a Governorship of Bengal would not be compatible with the presence in Calcutta of the Viceroy and the Government of India ;

(ii.) That, had it been decided to create a Governorship of Bengal, the question of the transfer of the capital from Calcutta would have been taken into consideration ;

(iii.) That although a majority of the Governor-General's Council and the Lieutenant-Governor of Bengal (Sir William Grey) were in favour of the creation of the Governorship, Sir John Lawrence, the Governor-General, was opposed to the proposal, but for purposes of better administration contemplated the institution of a Lieutenant-Governorship of Bihar and the separation of Assam from Bengal under a Chief Commissioner.

Since the discussions of 1867–8 considerable and very important changes have taken place in the constitutional development of Bengal. That Province has already an Executive Council, and the only change that would therefore be necessary for the realization of this part of our scheme is that the Lieutenant-Governorship should be converted into a Governorship. Particular arguments have from time to time been urged against the appointment of a Governor from England. These were that Bengal, more than any other province, requires the head of the Government to possess an intimate knowledge of India and of the Indian people, and that a statesman or politician appointed from England without previous knowledge of India would in no part of the country find his ignorance a greater drawback or be less able to cope with the intricacies of an exceedingly complex position.

18. We have no wish to underrate the great advantage to an Indian administrator of an intimate knowledge of the country and of the people he is to govern. At the same time actual experience has shown that a Governor, carefully selected and appointed from England and aided by a Council, can successfully administer a large Indian province, and that a province so administered requires less supervision on the part of the Government of India. In this connexion we may again refer to the correspondence of 1867–8 and cite two of the arguments employed by the late Sir Henry Maine, when discussing the question of a Council form of Government for Bengal. They are :—

(i.) That the system in Madras and Bombay has enabled a series of men of no conspicuous ability to carry on a difficult Government for a century with success.

(ii.) That the concession of a full Governorship to Bengal would have a good effect on English public opinion, which would accordingly cease to impose on the Government of India a responsibility which it is absolutely impossible to discharge.

In view of the great difficulties connected with the administration of Bengal, we attach the highest importance to these arguments. We are also convinced that nothing short of a full Governorship would satisfy the aspirations of the Bengalis and of the Mahommedans in Eastern Bengal. We may add that, as in the case of the Governorships of Madras and Bombay, the appointment would be open to members of the Indian Civil Service, although no doubt in practice the Governor will usually be recruited from England.

19. On the other hand one very grave and obvious objection has been raised in the past to the creation of a Governorship for Bengal, which we should fully share, were it not disposed of by the proposal which constitutes the keystone of our scheme. Unquestionably a most undesirable situation might and would quite possibly arise if a Governor-General of India and a Governor of Bengal, both selected from the ranks of English public men, were to reside in the same capital and be liable to be brought in various ways into regrettable antagonism or rivalry. This indeed constitutes yet another, and in our opinion very cogent, reason why the head-quarters of the Government of India should be transferred from Calcutta to Delhi.

20. We now turn to the proposal to create a Lieutenant-Governorship in Council for Bihar, Chota Nagpur, and Orissa. We are convinced that if the Governor of Bengal is to do justice to the territories which we propose to assign to him, and to safeguard the interests of the Mahommedans of his province, Bihar and Chota Nagpur must be dissociated from Bengal. Quite apart, however, from that consideration, we are satisfied that it is in the highest degree desirable to give the Hindi-speaking people, now included within the Province of Bengal, a separate administration. These people have hitherto been unequally yoked with the Bengalis, and have never, therefore, had a fair opportunity for development. The cry of Bihar for the Biharis has frequently been raised in connexion with the conferment of appointments, an excessive number of offices in Bihar having been held by Bengalis. The Biharis are a sturdy, loyal people, and it is a matter of common knowledge that, although they have long desired separation from Bengal, they refrained at the time of the Partition from asking for it, because they did not wish to join the Bengalis in opposition to Government. There has, moreover, been a very marked awakening in Bihar in recent years, and a strong belief has grown up among Biharis that Bihar will never develop until it is dissociated from Bengal. That belief will, unless a remedy be found, give rise to agitation in the near future, and the present is an admirable opportunity to carry out on our own initiative a thoroughly sound and much desired change. The Ooriyas, like the Biharis, have little in common with the Bengalis, and we propose to leave Orissa (and the Sambalpur district) with Bihar and Chota Nagpur. We believe

that this arrangement will well accord with popular sentiment in Orissa, and will be welcome to Bihar as presenting a seaboard to that province. We need hardly add that we have considered various alternatives, such as the making over of Chota Nagpur or of Orissa to the Central Provinces, and the creation of a Chief Commissionership instead of a Lieutenant-Governorship for Bihar, Chota Nagpur, and Orissa, but none of them seem to deserve more than passing consideration, and we have therefore refrained from troubling Your Lordship with the overwhelming arguments against them. We have also purposely refrained from discussing in this dispatch questions of subsidiary importance which must demand detailed consideration when the main features of the scheme are sanctioned, and we are in a position to consult the Local Governments concerned.

21. We now pass on to the last proposal, viz. to restore the Chief Commissionership of Assam. This would be merely a reversion to the policy advocated by Sir John Lawrence in 1867. This part of India is still in a backward condition and more fit for administration by a Chief Commissioner than a more highly developed form of government, and we may notice that this was the view which prevailed in 1896–7, when the question of transferring the Chittagong Division and the Dacca and Mymensingh districts to Assam were first discussed. Events of the past twelve months on the frontiers of Assam and Burma have clearly shown the necessity of having the north-east frontier, like the north-west frontier, more directly under the control of the Government of India and removed from that of the Local Government. We may add that we do not anticipate that any opposition will be raised to this proposal, which, moreover, forms an essential part of our scheme.

22. We will now give a rough indication of the cost of the scheme. No attempt at accuracy is possible, because we have purposely avoided making inquiries, as they would be likely to result in the premature disclosure of our proposals. The cost of the transfer to Delhi would be considerable. We cannot conceive, however, that a larger sum than four millions sterling would be necessary, and within that figure probably could be found the three years' interest on capital which would have to be paid till the necessary works and buildings were completed. We might find it necessary to issue a 'City of Delhi' Gold Loan at 3½ per cent. guaranteed by the Government of India, the interest, or the larger part of the interest, on this loan being eventually obtainable from rents and taxes. In connexion with a general enhancement of land values, which would ensue at Delhi as a result of the transfer, we should endeavour to secure some part of the increment value, which at Calcutta has gone into the pockets of the landlords. Other assets which would form a set-off to the expenditure would be the great rise of Government land at Delhi and its neighbourhood, and a con-

siderable amount which would be realized on the sale of Government land and buildings no longer required at Calcutta. The proximity of Delhi to Simla would also have the effect of reducing the current expenditure involved in the annual move to and from Simla. The actual railway journey from Calcutta to Simla takes 42 hours, while Delhi can be reached from Simla in 14 hours. Further, inasmuch as the Government of India would be able to stay longer in Delhi than in Calcutta, the cost on account of hill allowances would be reduced. We should also add that many of the works now in progress at Delhi in connexion with the construction of roads and railways and the provision of electricity and water for the Durbar, and upon which considerable expenditure has been incurred, will be of appreciable value to the Government of India as permanent works when the transfer is made.

23. As regards the remaining proposals, the recurring expenditure will be that involved in the creation of a Governorship for Bengal and a Chief Commissionership for Assam. The pay and allowances, taken together, of the Lieutenant-Governor of Bengal already exceed the pay of a Governor of Madras or Bombay, and the increase in expenditure when a Governor is appointed would not, we think, be much beyond that required for the support of a bodyguard and a band. Considerable initial expenditure would be required in connexion with the acquisition of land and the construction of buildings for the new capital of Bihar, and, judging from the experience gained in connexion with Dacca, we may assume that this will amount to about 50 or 60 lakhs. Some further initial expenditure would be necessary in connexion with the summer head-quarters, wherever these may be fixed.

24. Before concluding this dispatch we venture to say a few words as regards the need for a very early decision on the proposals we have put forward for Your Lordship's consideration. It is manifest that, if the transfer of the capital is to be given effect to, the question becomes more difficult the longer it remains unsolved. The experience of the last two sessions has shown that the present Council Chamber in Government House, Calcutta, fails totally to meet the needs of the enlarged Imperial Legislative Council, and the proposal to acquire a site and to construct a Council Chamber is already under discussion. Once a new Council Chamber is built, the position of Calcutta as the capital of India will be further strengthened and consolidated; and, though we are convinced that a transfer will in any case eventually have to be made, it will then be attended by much greater difficulty and still further expense. Similarly, if some modification of the Partition is, as we believe, desirable, the sooner it is effected the better, but we do not see how it can be safely effected with due regard for the dignity of Government as well as for the public opinion of the rest of India and more especially for Mahommedan sentiment, except as part of the larger scheme we have outlined. In the event of these far-reaching proposals being sanctioned by

His Majesty's Government, as we trust may be the case, we are of opinion that the presence of His Majesty the King-Emperor at Delhi would offer a unique opportunity for a pronouncement of one of the most weighty decisions ever taken since the establishment of British rule in India. The other two proposals embodied in our scheme are not of such great urgency but are consequentially essential and in themselves of great importance. Half measures will be of no avail, and whatever is to be done should be done so as to make a final settlement and to satisfy the claims of all concerned. The scheme which we have ventured to commend to Your Lordship's favourable consideration is not put forward with any spirit of opportunism, but in the belief that action on the lines proposed will be a bold stroke of statesmanship which would give unprecedented satisfaction and will for ever associate so unique an event as the visit of the reigning Sovereign to his Indian dominions with a new era in the history of India.

25. Should the above scheme meet with the approval of your Lordship and His Majesty's Government, we would propose that the King-Emperor should announce at the Durbar the transfer of the capital from Calcutta to Delhi and simultaneously, and as a consequence of that transfer, the creation at an early date of a Governorship in Council for Bengal and of a new Lieutenant-Governorship in Council for Bihar, Chota Nagpur, and Orissa, with such administrative changes and redistribution of boundaries as the Governor-General in Council would in due course determine with a view to removing any legitimate causes for dissatisfaction arising out of the Partition of 1905. The formula of such a pronouncement could be defined after general sanction had been given to the scheme. This sanction we now have the honour to solicit from Your Lordship.

26. We should thus be able after the Durbar to discuss in detail with local and other authorities the best method of carrying out a modification of Bengal on such broad and comprehensive lines as to form a settlement that shall be final and satisfactory to all.

We have the honour to be,
My Lord Marquess,
Your Lordship's most obedient humble Servants,

HARDINGE OF PENSHURST.
O'M. CREAGH.
GUY FLEETWOOD WILSON.
J. L. JENKINS.
R. W. CARLYLE.
H. BUTLER.
SYED ALI IMAM.
W. H. CLARK.

No. 5

To His Excellency the Right Honourable The Governor-General of India in Council.

(Secret.) India Office, London,
My Lord, 1st November, 1911.

I have received Your Excellency's dispatch, dated the 25th August last and issued in the Home Department, and I have considered it in Council with the attention due to the importance of its subject.

2. In the first place you propose to transfer from Calcutta to Delhi the seat of the Government of India, a momentous change which in your opinion can be advocated on its intrinsic merits, and apart from the considerations which are discussed in the later passages of your dispatch. You point out with truth that many of the circumstances which explain the selection of Fort William in the second half of the eighteenth century as the head-quarters of the East India Company cannot now be adduced as arguments for the permanent retention of Calcutta as the capital of British India; while certain new conditions and developments seem to point positively towards the removal of the Central Government to another position. Such a suggestion is not entirely novel, since it has often been asked whether the inconvenience and cost of an annual migration to the Hills could not be avoided by founding a new official capital at some place in which Europeans could reside healthfully and work efficiently throughout the whole year. You regard any such solution as impracticable, in my judgement rightly; and you proceed to describe in favourable terms the purely material claims of Delhi for approval as the new centre of Government. There would be undoubted advantage both in a longer sojourn at the capital than is at present advisable, and in the shorter journey to and from Simla when the yearly transfer has to be made; while weight may properly be attached to the central situation of Delhi and to its fortunate position as a great railway junction. As you point out, these facts of themselves ensure not a few administrative advantages, and I am not disposed to attach serious importance to the removal of the Department of Commerce and Industry from a busy centre like Calcutta; for any official disadvantage due to this cause should be counterbalanced by the gain of a wider outlook upon the commercial activities of India as a whole.

3. From the historical standpoint, to which you justly draw attention, impressive reasons in support of the transfer can not less easily be advanced. Not only do the ancient walls of Delhi enshrine an Imperial tradition comparable with that of Constantinople, or with that of Rome itself, but the near neighbourhood

of the existing City formed the theatre for some most notable scenes in the old-time drama of Hindu history, celebrated in the vast treasure-house of national epic verse. To the races of India, for whom the legends and records of the past are charged with so intense a meaning, this resumption by the Paramount Power of the seat of venerable Empire should at once enforce the continuity and promise the permanency of British sovereign rule over the length and breadth of the country. Historical reasons will thus prove to be political reasons of deep importance and of real value in favour of the proposed change. I share, too, your belief that the Ruling Chiefs as a body will favour the policy and give to it their hearty adhesion.

4. But, however solid may be the material advantages which you enumerate, and however warm the anticipated response from Indian sentiment, it may be questioned whether we should venture to contemplate so abrupt a departure from the traditions of British government, and so complete a dislocation of settled official habits, if we were able to regard with absolute satisfaction the position as it exists at Calcutta.

5. Your Excellency is not unaware that for some time past I have appreciated the special difficulties arising from the collocation of the Government of India and the Government of Bengal in the same head-quarters. The arrangement, as you frankly describe it, is a bad one for both Governments, and the Viceroy for the time being is inevitably faced by this dilemma, that either he must become Governor-in-chief of Bengal in a unique sense, or he must consent to be saddled by public opinion both in India and at home with direct liability for acts of administration or policy over which he only exercises in fact the general control of a Supreme Government. The Local Government, on the other hand, necessarily suffers from losing some part of the sense of responsibility rightly attaching to it as to other similar administrations. It involves no imputation either upon Your Excellency's Government, or upon the distinguished public servants who have carried on the Government of Bengal, to pronounce the system radically an unsound one.

6. It might, indeed, have been thought possible to correct this anomaly with less disturbance of present conditions, by retaining Calcutta as the central seat of Government, under the immediate control of the Viceroy, and transferring the Government of Bengal elsewhere. But two considerations appear to forbid the adoption of such a course. In the first place it is doubtful whether the arbitrary creation of an artificial boundary could in practice cause Calcutta, so long the capital of Western Bengal, to cease altogether to be a Bengali city in the fullest sense. Again, the experiment of turning the second city of the British Empire into an Imperial *enclave* would be certain to cast a new and altogether undue burden upon the shoulders of the Governor-General,

however freely the actual work of administration might be delegated to subordinate officials. It is true that Washington, during the century since it became the capital of the United States, has grown into a large and wealthy city, with industries on a considerable scale; but even now it possesses less than a third of the population of Calcutta; while Ottawa and the new Australian foundation of Yass-Canberra are likely to continue mainly as political capitals. Such a solution may therefore be dismissed, while no parallel difficulties need be dreaded if Delhi and its surroundings are placed directly under the Government of India.

7. I am glad to observe that you have not underrated the objections to the transfer which are likely to be entertained in some quarters. The compensation which will be offered to Bengali sentiment by other of your interdependent proposals is in my opinion fully adequate, and I do not think it necessary to dwell further on this aspect of the change. But it cannot be supposed that the European community of Calcutta, particularly the commercial section, can regard it without some feelings of chagrin and disappointment in their capacity as citizens. But you may rely, I am certain, upon their wider patriotism, and upon their willingness to subordinate local and personal considerations to those which concern the general good of India. Nor, on full reflection, need they fear any seriously untoward consequences. The city will remain the seat of a most prominent and influential Government. I see no reason why it should suffer in material prosperity, retaining as it will not merely an almost universal commerce, but the practical monopoly in more than one branch of trade. And from the standpoint of sentiment, nothing can ever deprive Calcutta of her association with a century and a half of British government, signalized by many great events, and adorned by the famous roll of those who have preceded Your Excellency in the office of Governor-General. Such a history is a perpetual possession, and it will guide the steps of all travellers to Calcutta not less certainly than has the presence of the Supreme Government in the past.

8. In view of this change it is your desire that a Governorship in Council should be constituted for Bengal. You remind me that the possibility of such a creation was fully discussed in the years 1867 and 1868, although divergent opinions were expressed by the different authorities of that day, and no steps were in fact taken. One of the principal objections felt then, as now, to the proposition taken by itself, hinged on the difficulty of planting such an administration in Calcutta side by side with that of the Government of India. The criticism is valid, but it would be silenced by the transfer of the capital to Delhi. I note with general agreement your observations upon the probable appointment in ordinary circumstances of a statesman or administrator from the United Kingdom to the Governorship of Bengal, while

concurring that the appointment, like other great Governorships, would be open to members of the Indian Civil Service whenever it might be desirable to seek for an occupant among their ranks. I also share your conviction that no lower grade of administration would be held in the altered conditions to satisfy the reasonable aspirations either of Hindus or of Mohammedans for the reputation and status of Bengal among the great divisions of India.

9. In considering the area which the Governor of a new Bengal should be called upon to administer, it is not necessary to recall at length the steps which led up to the partition of the former Presidency, or to engage in detailed examination of its results. It is universally admitted that up to the year 1905 the task which the Lieutenant-Governor of Bengal and his subordinates had to perform, having regard to the extent of the Presidency, to its population, and the difficulties of communication in many districts, was one with which no energy or capacity could completely cope. It is equally certain that the provincial centre of gravity was unduly diverted to the western portion of the area, and to Calcutta itself; with the result that the Mohammedan community of Eastern Bengal were unintentionally deprived of an adequate share of consideration and attention. Such a state of affairs was not likely to agitate public opinion on this side of the water; the name of Dacca, once so familiar to British ears, had become almost unknown to them. A rearrangement of administration at the instance of the Government of India was therefore almost imperative; but the plan that was ultimately adopted, while effecting some beneficial changes in Eastern Bengal, and offering relief to the overladen Government, produced consequences in relation to the Bengali population which you depict with accuracy and fairness. History teaches us that it has sometimes been found necessary to ignore local sentiment, or to override racial prejudice, in the interest of sound administration, or in order to establish an ethical or political principle. But even where indisputable justification can be claimed, such an exercise of authority is almost always regrettable in itself; and it will often be wise to grasp an opportunity of assuaging the resentment which has been aroused, where this can be done without practical detriment to order and good government. You point out, moreover, that in this case the grievance is not only one of sentiment, but that in connexion with the Legislative Councils the Bengali population is subjected to practical disabilities which demand and merit some redress. In Your Excellency's opinion the desired objects can properly be achieved by re-uniting the five Bengali-speaking divisions, of the Presidency, Burdwan, Dacca, Rajshahi, and Chittagong into the new Presidency to be for the future administered by the Governor of Bengal in Council.

10. At the same time you lay deserved stress on the importance of giving no ground for apprehension to the Mohammedans of

Eastern Bengal lest their interests should be injuriously affected by the intended alteration. In common with others of their faith, they would presumably regard with satisfaction the re-erection of Delhi as the capital of India; but they would be primarily concerned with the local aspect of the proposals. It is evident that in delimiting the new Presidency care is needed to see that the balance of the different populations, though it could not remain throughout the entire area as it stands at present in Eastern Bengal and Assam, is not unduly disturbed; and, as you point out, the special representation on the Legislative Councils which is enjoyed by the Mohammedans supplies them with a distinct safeguard in this respect. I attach, however, no little importance to the proposal that the Governor of Bengal should regard Dacca as his second capital, with full claims on his regular attention, and his residence for an appreciable part of the year. The arrangements which have been made there for the administration of the existing Lieutenant-Governor will thus not merely be utilised, but will serve a valuable purpose which it would have been difficult to secure had proposals similar to those which you now make been put forward when the old Bengal was undivided. In these circumstances I consider that you are right not to make any suggestion for a Commissionership at Dacca analogous to that existing in Sind in the Presidency of Bombay.

11. Your next proposition involves the creation of a Lieutenant-Governorship in Council for Bihar, Chota Nagpur, and Orissa. I observe that you have considered and dismissed a number of alternative suggestions for dealing with these three important and interesting divisions. Some of these schemes, as Your Excellency is aware, have at different times been the subjects of discussion when a rearrangement of boundaries has been contemplated; and I refrain from commenting on any of them at this moment, holding, as I do, that you have offered the plainest and most reasonable solution, if any substantial change is to be made at all. The three sub-provinces above named, while differing *inter se* in some marked features, are alike loosely connected with Bengal proper, and their complete administrative severance would involve no hardship to the Presidency. You describe the desire of the hardy and law-abiding inhabitants of Bihar for a clearer expression of their local individuality, differing from the Bengalis as they largely do in origin, in language, in proclivities, and in the nature of the soil they cultivate. Orissa, again, with its variety of races and physical conditions, with its considerable seaboard, invested with a peculiar sanctity of religious tradition, prefers a code of land legislation founded on a system of tenure differing in the main from those both of Bengal and of the Central Provinces, and has long felt uneasiness at a possible loss of identity as a distinct community. The highlands of Chota Nagpur, far less densely populated than Bengal, and containing a large aboriginal element, also possess ancestral and

historical claims for separate treatment in various respects. These three sub-provinces, with their combined population of some thirty-five millions, would form a charge well within the compass of a Lieutenant-Governorship; and it may be assumed that the controlling officer would be able to bestow continuous care and attention upon each of the divisions within his area.

12. The concluding suggestion which you put forward is that the Chief Commissionership of Assam should be revived. I attach weight to your argument that the political conditions on the north-eastern frontier of India render it desirable that like the North-West it should be the immediate concern of Your Excellency's Government, rather than of a local administration; and I note your belief, which I trust may prove to be well founded, that the inhabitants of this Province, of first-rate importance in industry and commerce, are not likely to offer any opposition to the change. On the contrary, they may be disposed to welcome it, since I am confident that the Supreme Government would assiduously preserve all local interests, either material or of sentiment, from any possible detriment attributable to the altered system.

13. I make no complaint of the fact that Your Excellency is unable at this stage to present for sanction a close estimate of the cost which is likely to be incurred in respect of the various proposals included in your Despatch, either by way of initial or of recurring expenditure. You have only found it possible to name the round sum of four millions sterling, which you regard as the outside figure of cost which could be incurred by the transfer to Delhi, and you indicate your opinion that this amount might be raised by a special Gold Loan. I agree that it was not possible for you, in the special circumstances of the case, to undertake the investigations which would have been necessary before you could submit even a general estimate of expenditure either at Delhi or in relation to the Governorship of Bengal, to the Lieutenant-Governorship of the new United Provinces, or to the Chief Commissionership of Assam. This being so, I refrain for the present from making any observations on this part of the subject, merely stating my general conviction that Your Excellency is fully alive to the magnitude of the proposed operations, and to the necessity for thoughtful preparation and continuous vigilance in order that the expenditure, which must necessarily be so large, may be conducted with no tinge of wastefulness; and as regards the particular case of Delhi, assuring you that my full sympathy will be extended to any efforts you may make to prevent holding-up against Government of land which you may find it necessary to secure for public purposes.

14. I find myself in general agreement with Your Excellency when you state that if this policy is to be approved, it is imperative to avoid delay in carrying it into effect. You give substantial

reasons for this opinion, both on administrative and economical grounds, and though a number of details remain for settlement, many of which must demand careful examination and consultation, while some may awaken differences of opinion, it is possible now to pronounce a definite opinion upon the broad features of the scheme. Regarding it as a whole, and appreciating the balance sought to be maintained between the different races, classes, and interests likely to be affected, I cannot recall in history, nor can I picture in any portion of the civilized world as it now exists, a series of administrative changes of so wide a scope culminating in the transfer of the main seat of Government, carried out, as I believe the future will prove, with so little detriment to any class of the community, while satisfying the historic sense of millions, aiding the general work of Government, and removing the deeply-felt grievance of many. I therefore give my general sanction to your proposals, and I share in your belief that the transfer of the Capital, and the concomitant features of the scheme form a subject worthy of announcement by the King-Emperor in person on the unique and eagerly-anticipated occasion at Delhi. I am commanded to inform you that at the Durbar on the 12th of December His Imperial Majesty will be pleased to declare that Delhi will become the capital city of India, that a Governor in Council will be appointed for Bengal, a Lieutenant-Governor in Council for Bihar, Chota Nagpur, and Orissa, and a Chief Commissioner for the Province of Assam.

I have the honour to be,
My Lord,
Your Lordship's most obedient humble servant,
CREWE.

APPENDIX IV

ANNOUNCEMENTS MADE AT THE CORONATION DURBAR

No. 1

ANNOUNCEMENT OF HIS MAJESTY THE KING-EMPEROR

It is with genuine feelings of thankfulness and satisfaction that I stand here to-day among you. This year has been to the Queen-Empress and myself one of many great ceremonies and of an unusual though happy burden of toil. But in spite of time and distance, the grateful recollections of our last visit to India have drawn us again to the land which we then learned to love, and we started with bright hopes on our long journey to revisit the country in which we had already met the kindness of a home.

In doing so I have fulfilled the wish expressed in my message of last July, to announce to you in person my Coronation, celebrated on the 22nd of June in Westminster Abbey, when by the Grace of God the Crown of my Forefathers was placed on my head with solemn form and ancient ceremony.

By my presence with the Queen-Empress I am also anxious to show our affection for the loyal Princes and faithful Peoples of India, and how dear to our hearts is the welfare and happiness of the Indian Empire.

It was, moreover, my desire that those who could not be present at the solemnity of the Coronation should have the opportunity of taking part in its commemoration at Delhi.

It is a sincere pleasure and gratification to myself and the Queen-Empress to behold this vast assemblage and in it my Governors and trusty officials, my great Princes, the representatives of the Peoples, and deputations from the Military Forces of my Indian Dominions.

I shall receive in person with heartfelt satisfaction the homage and allegiance which they loyally desire to render.

I am deeply impressed with the thought that a spirit of sympathy and affectionate goodwill unites Princes and people with me on this historic occasion.

In token of these sentiments I have decided to commemorate the event of my Coronation by certain marks of my especial

favour and consideration, and these I will later on to-day cause to be announced by my Governor-General to this assembly.

Finally I rejoice to have this opportunity of renewing in my own person those assurances which have been given you by my revered predecessors of the maintenance of your rights and privileges and of my earnest concern for your welfare, peace, and contentment.

May the Divine favour of Providence watch over my People and assist me in my utmost endeavour to promote their happiness and prosperity.

To all present, feudatories and subjects, I tender Our loving greeting.

No. 2

ANNOUNCEMENTS BY THE GOVERNOR-GENERAL OF INDIA ON BEHALF OF HIS MAJESTY THE KING-EMPEROR

'*To all to whom these presents may come.*

'By the command of His Most Excellent Majesty George the Fifth, by the grace of God King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Defender of the Faith, Emperor of India, I, His Governor-General, do hereby declare and notify the grants, concessions, reliefs, and benefactions which His Imperial Majesty has been graciously pleased to bestow upon this glorious and memorable occasion.

'Humbly and dutifully submissive to His Most Gracious Majesty's will and pleasure, the Government of India have resolved, with the approval of His Imperial Majesty's Secretary of State, to acknowledge the predominant claims of educational advancement on the resources of the Indian Empire, and have *decided in recognition of a very commendable demand to set* themselves to making education in India as accessible and wide as possible. With this purpose they propose to devote at once 50 lakhs to the promotion of truly popular education, and it is the firm intention of Government to add to the grant now announced further grants in future years on a generous scale.

'Graciously recognizing the signal and faithful services of His forces by land and sea, the King-Emperor has charged me to announce the award of half a month's pay of rank to all non-commissioned officers and men and reservists both of His British Army in India and His Indian Army, to the equivalent ranks of the Royal Indian Marine, and to all permanent employés of

departmental or non-combatant establishments paid from the military estimates whose pay may not exceed the sum of Rs. 50 *monthly*.

'Furthermore His Imperial Majesty has been graciously pleased to ordain that from henceforth the loyal Native officers, men, and reservists of His Indian Army shall be eligible for the grant of the Victoria Cross for valour; that membership of the Order of British India shall be increased during the decade following this His Imperial Majesty's Coronation Durbar by 52 appointments in the First Class, and by 100 appointments in the Second Class, and that in mark of these historic ceremonies 15 new appointments in the First Class and 19 new appointments in the Second Class shall forthwith be made; that from henceforth Indian officers of the Frontier Militia Corps and the Military Police shall be deemed eligible for admission to the aforesaid Order; that special grants of land or assignments or remissions of land revenue, as the case may be, shall now be conferred on certain Native officers of His Imperial Majesty's Indian Army who may be distinguished for long and honourable service; and that the special allowances now assigned for three years only to the widows of the deceased members of the Indian Order of Merit shall, with effect from the date of this Durbar, hereafter be continued to all such widows until death or re-marriage.

'Graciously appreciating the devoted and successful labours of His Civil Services His Imperial Majesty has commanded me to declare the grant of half a month's pay to all permanent servants in the civil employ of Government whose pay may not exceed the sum of Rs. 50 monthly.

'Further, it is His Imperial Majesty's gracious behest that all persons to whom may have been or hereafter may be granted the titles of Dewan Bahadur, Sirdar Bahadur, Khan Bahadur, Rai Bahadur, Rao Bahadur, Khan Sahib, Rai Sahib, or Rao Sahib, shall receive distinctive badges as a symbol of respect and honour; and that on all holders present or to come of the venerable titles of Mahamahopadyaya and Shamsululama shall be conferred some annual pension for the good report of the ancient learning of India.

'Moreover, in commemoration of this Durbar, and as a reward for conspicuous public service, certain grants of land, free of revenue, tenable for the life of the grantee, or in the discretion of the local administration for one further life, shall be bestowed or restored in the North-Western Frontier Province and in Baluchistan.

'In His gracious solicitude for the welfare of His loyal Indian Princes His Imperial Majesty has commanded me to proclaim that from henceforth no Nazarana payments shall be made upon succession to their States. And sundry debts owing to the Government by the non-jurisdictional estates in Kathiawar and Gujerat, and also by the Bhumia Chiefs of Mewar, will be cancelled

and remitted in whole or in part under the Orders of the Government of India.

'In token of His appreciation of the Imperial Service Troops certain supernumerary appointments in the Order of British India will be made.

'In the exercise of His Royal and Imperial clemency and compassion His Most Excellent Majesty has been graciously pleased to ordain that certain prisoners now suffering the penalty of the law for crimes and misdemeanours shall be released from imprisonment, and that all those civil debtors now in prison whose debts may be small, and due not to fraud, but to real poverty, shall be discharged and that their debts shall be paid.

'The persons by whom and the terms and conditions on which these grants, concessions, reliefs, and benefactions shall be enjoyed will be hereafter declared.

'God Save the King!'

No. 3

ANNOUNCEMENT OF HIS MAJESTY THE KING-EMPEROR

We are pleased to announce to Our People that on the advice of Our Ministers tendered after consultation with Our Governor-General in Council We have decided upon the transfer of the seat of the Government of India from Calcutta to the ancient Capital Delhi, and, simultaneously and as a consequence of that transfer, the creation at as early a date as possible of a Governorship for the Presidency of Bengal, of a new Lieutenant-Governorship in Council administering the areas of Bihar, Chota Nagpur, and Orissa, and of a Chief Commissionership of Assam, with such administrative changes and redistribution of boundaries as Our Governor-General in Council with the approval of Our Secretary of State for India in Council may in due course determine. It is Our earnest desire that these changes may conduce to the better administration of India and the greater prosperity and happiness of Our beloved People.

APPENDIX V

No. 3 of 1913

GOVERNMENT OF INDIA

HOME DEPARTMENT

To the Right Honourable the Marquess of Crewe, K.G.,
His Majesty's Secretary of State for India.

(Public.) Delhi,
My Lord Marquess, 23rd January, 1913.

In accordance with the provisions of Section 7 of the Indian Councils Act, 1909, we have the honour to submit for Your Lordship's information, and for presentation to Parliament, copies of the revised Regulations for the constitution of the Legislative Councils of the Governors of Madras and Bombay, and of the Lieutenant-Governors of the United Provinces, the Punjab and Burma, which have recently received the approval of the Secretary of State in Council, under Section 6 of the same Act. In consequence of the redistribution of territories and of the appointment of a Governor in Council to the Presidency of Fort William in Bengal, which His Imperial Majesty was graciously pleased to announce at His Durbar held at Delhi in December, 1911, Your Lordship has also approved the constitution of Legislative Councils for the Governor of Bengal, the Lieutenant-Governor of Bihar and Orissa, and the Chief Commissioner of Assam. Of the Regulations relating to these three Councils, which have likewise received the approval of the Secretary of State in Council, we also append copies, together with copies of the Proclamations issued by us on the 14th November, 1912, with His Majesty's approval, extending to the territories administered by the Chief Commissioner of Assam the provisions of the Indian Councils Acts, 1861 to 1909. Finally we enclose copies of the revised Regulations for the constitution of the Legislative Council of the Governor-General, which have similarly been approved by the Secretary of State in Council.

2. In addition to these papers, we annex copies of the rules in force in the Legislative Councils of all Provinces, relating to the discussion of the annual Financial Statement, and of matters of general public interest, and to the asking of questions. These rules have been framed, with the sanction of the Governor-General in Council, under Section 5 of the Indian Councils Act, 1909, and in accordance with the provisions of Section 7 thereof, require to be presented to both Houses of Parliament. The corresponding rules in force in the Council of the Governor-General framed in 1909 have already been presented to Parliament, and no change has since been made in them, although a copy of these rules also is enclosed.

3. The circumstances which gave rise to a revision of the Council Regulations sanctioned in 1909 were as follows. In the first place, the administrative changes which have resulted from His Imperial Majesty's announcement at the Delhi Durbar have necessitated the rearrangement of the electorates framed under the Regulations of 1909 for the return of representatives to the Governor-General's Council by the old province of Bengal and Eastern Bengal and Assam, and the provision of adequate representation on that Council for the Bengal Presidency as reconstituted, together with the provinces of Bihar and Orissa and Assam, while for similar reasons it has been requisite to frame entirely new Regulations constituting Councils for the Lieutenant-Governor of Bihar and Orissa and the Chief Commissioner of Assam. The consequential modification of the Regulations governing the Council of the Lieutenant-Governor of Bengal practically resulted in the formation of a new Council for the Governor of that province. In the second place, the experience which has been gained in the practical working of the Regulations of 1909 has been sufficient to disclose certain points in which they are susceptible of improvement. To this cause are to be attributed the modifications which have been sanctioned in the Regulations concerning those Provinces which were unaffected by His Majesty's announcement at Delhi, and, to some extent, the form which has been adopted in drafting the Regulations for the Governor-General's Council and the Councils of the three new provinces.

4. With the object of ascertaining the sufficiency or otherwise of the Regulations of 1909, we invited all local Governments to furnish us with a report on their practical working shortly after the first elections were held, together with any suggestions for improvement and amendment which they might have to offer, and the revision which has now been effected is the result of the recommendations which we thought fit to make to Your Lordship after full consideration of the materials thus placed at our disposal. In formulating our proposals we have kept in view, as a guiding principle, the fact that since the Councils have so far stood the test of only one general election, it would be premature and impolitic, at this stage of their development, to embark upon any material changes in the broad principles upon which their constitution is based. The amendments made have been confined, therefore, so far as possible, to matters of detail, and consist to a large extent of an attempt to simplify and render more convenient the electoral procedure. At the same time in Madras, the United Provinces and the Punjab the opportunity has been taken to effect some changes in the distribution of seats, in the province first mentioned with a view to the more equitable representation of the landholders and local bodies, in the second mainly in consequence of a rearrangement of divisional charges, and in the third with the object of increasing

the number of members chosen by election, and on the analogy of the systems in force elsewhere, of giving representation to District Boards.

5. We apprehend that Your Lordship may find it convenient, *in presenting the revised Regulations to Parliament*, to be in possession of a self-contained summary of the changes effected by this revision, together with an explanation of their scope and purpose. With this object, we have caused to be prepared, and append to this dispatch, a memorandum which explains the matter in detail.

We have the honour to be,
My Lord Marquess,
Your Lordship's most obedient, humble servants,

HARDINGE OF PENSHURST.
O'MOORE CREAGH.
G. FLEETWOOD WILSON.
R. W. CARLYLE.
HARCOURT BUTLER.
S. A. IMAM.
W. H. CLARK.
R. H. CRADDOCK.

Enclosure no. 1.

MEMORANDUM

Showing the changes made in 1912 *in the Regulations relating to the Legislative Councils in India, together with the reasons upon which they are based.*

The general reasons which have led to the revision of the Regulations framed in 1909 under the Indian Councils Act of that year are explained in the dispatch which accompanies this memorandum. For the purpose of exhibiting in detail the changes made, the subject may conveniently be divided into three heads:—

I. Changes made in the constitution of the Councils themselves, such as alterations in the number of elected or nominated seats, or the redistribution of seats between electorates.
II. Changes made in the qualifications of voters and candidates.
III. Changes made in electoral procedure.
IV. Other changes, which cannot be classified under any of the three foregoing categories.

I.—*Changes made in the constitution of the Councils*

This heading falls naturally into three sections :—

(*a*) The creation of new Councils in consequence of the administrative changes announced by His Imperial Majesty at the Delhi Durbar, and the constitution of the Councils thus necessitated.
(*b*) The addition or alteration of the grouping of seats on existing Councils unaffected by the recent territorial redistribution.

(c) The rearrangement of representation on the Imperial Legislative Council due to changes in the Provincial Councils.

(a) *The formation* of the Presidency of Bengal under a Governor in Council, of the Province of Bihar and Orissa under a Lieutenant-Governor in Council, and of the Province of Assam under a Chief Commissioner, out of the areas previously constituting the provinces of Bengal and Eastern Bengal and Assam, has resulted in the abolition of the Legislative Councils of the Lieutenant-Governors of Bengal and Eastern Bengal and Assam and the creation of new Councils for the three new Provinces. In framing the Regulations for these three new Councils, the object aimed at has been, on the one hand, to preserve intact, so far as possible, the character of the electorates which existed in Bengal and Eastern Bengal and Assam under the Regulations of 1909, and to avoid the disfranchisement of any interest or individuals represented on the old Councils, and, on the other hand, to afford recognition to the further claims to representation which the territorial redistribution has given to certain interests and communities.

The Bengal Council.—The interests which were represented on the Councils of the Lieutenant-Governors of Bengal and Eastern Bengal and Assam were the following :—

	No. of seats on the previous Council in—	
	Bengal.	*Eastern Bengal and Assam.*
The Indian Commercial Community .	1	1
The Corporation of Calcutta . . .	1	—
The University of Calcutta . . .	1	—
The Bengal Chamber of Commerce . .	2	—
The Calcutta Trades Association .	1	—
The Tea Planting Community, Eastern Bengal and Assam	—	2
The Planting Community, Bengal . .	1	—
The Chittagong Port Trust . . .	—	1
The Jute interest	—	1

These interests had 12 seats on the old Councils, as compared with 9 under the new Regulations. The Indian commercial community (as elsewhere) will have one nominated representative only, while the redistribution of territories having resulted in the separation from Bengal of the important planting areas in Assam and Bihar, the representation of that community in Bengal will be reduced to one member only, to be chosen by an electorate consisting of the managers of tea gardens. The seat representing the Jute interest which was previously filled by election by the Narayanganj Chamber of Commerce, will be replaced by a nominated seat to be allotted to the European commercial community outside Calcutta and Chittagong, this wider field of selection being considered more appropriate to the circumstances of the new province.

In addition to the foregoing, the following electorates existed in the two Provinces :—

(i.) The Municipalities of each Division.
(ii.) The District Boards of each Division.
(iii.) The Mohammedan Community of each Division.
(iv.) The Landholders of each Division.

To each divisional electorate one member has been allotted, but, on account of the relatively greater importance of Municipal interests in the Presidency and Burdwan Divisions, it has been arranged that the Municipalities of these Divisions shall return an additional member alternately at every election, and that on account of the relatively small importance of the Municipal and Landholding interests in the Chittagong Division the Municipalities and Landholders of that Division shall each elect a member alternately and not concurrently. The total number of members thus returned at each election is twenty.

In addition to the 27 elected seats specified above another seat has been reserved for the town of Calcutta, in recognition of the fact that the special qualifications required of the members representing the Corporation and University respectively may lead to the exclusion of suitable candidates, who by reason of the size and importance of the town are naturally to be found in larger numbers than in less advanced areas. In consonance with the general scheme upon which the Regulations are framed the electors to this seat will be the non-official members of the Calcutta Corporation other than those nominated by Government, but the qualification for candidates will be merely residence in Calcutta, thus affording a chance to any citizen of outstanding eminence to secure his return.

The total number of elected seats is thus 28, as compared with 26 on the old Council, with a consequential reduction in the number of nominated seats from 22 to 20. At the same time the maximum number of officials who may be nominated has been fixed at 16 instead of 17. As already mentioned, two of the nominated seats are earmarked for the European commercial community outside Calcutta and Chittagong and the Indian commercial community respectively, thus leaving two non-official nominated seats unappropriated, selection for which rests with the discretion of the Governor.

In addition to these 48 elected and nominated seats, provision has been made, as on the old Council, for the nomination of two expert members, whether officials or non-officials, to assist in the conduct of proposed or pending Legislation.

The Bihar and Orissa Council.—The interests and communities situated in the area now embraced by this province which enjoyed representation on the old Bengal Council were the following :—

(i.) The Municipalities.
(ii.) The District Boards.
(iii.) The Landholders.

(iv.) The Mohammedan Community.
(v.) The Planting Community.[1]

The Regulations for the new Council provide one seat for each division to be filled by each of the three first named, or 15 seats in all. For the Mohammedan Community they provide 1 seat for each of the Patna, Tirhut and Bhagalpur Divisions, and a fourth seat to be filled by joint election by voters residing in the Orissa and Chota Nagpur Divisions, where the community is relatively less numerous and influential. In the new province the indigo interest will be of relatively more importance than in the old, and one seat has been assigned to it, while the mining interest has now attained a size which is held to entitle it also to similar representation. Both seats will be filled by election, thus bringing the total number of elected seats to 21.

The number of nominated members has been fixed at 19, of whom not more than 15 may be officials, and the selection for the 4 nominated seats open to non-officials has been left to the discretion of the Lieutenant-Governor with a view to the admission of the claims of other interests which may not secure representation through the channel of election. In addition the Lieutenant-Governor is given power to nominate one expert member, either an official or non-official, to assist the progress of particular legislative measures.

The Assam Council.—The interests situated in the area now included in this province which enjoyed representation on the Council of the Lieutenant-Governor of Eastern Bengal and Assam, were the following :—

(i.) The Municipalities.
(ii.) The Local Boards.
(iii.) The Landholders.
(iv.) The Mohammedan Community.
(v.) The Tea Planting Community.

Each of the first four of these interests has been provided with two seats on the new Council—one for each Division, and three seats have been assigned to the tea-planting community—thus making a total of 11 elected seats.

Thirteen nominated seats have been allowed, of which not more than 9 are to be filled by officials, the selection for the 4 nominated seats for non-officials being made at the discretion of the Chief Commissioner, who is also empowered to nominate, in addition to the 13 officials and non-officials mentioned, one expert member, either official or non-official, to assist in the progress of legislative measures.

(*b*) The changes effected by the Regulations in the constitution of existing Provincial Councils are enumerated below :—

Madras.—The number of elected seats has been increased from 19 to 21, a corresponding reduction, from 23 to 21, being made at

[1] This nominated seat on the old Bengal Council was intended to be filled from the Tea Planting Community in Darjeeling and the Indigo Planting Community in Bihar. It had been allotted on the occasion of the first election to the former, but the latter had a reversionary interest in it.

the same time in the number of the nominated seats. The electoral groups into which the districts of the Presidency were divided by the Regulations of 1909 have also been redistributed.

Under Regulation II of the Regulations of 1909 for the constitution of the Madras Council, landholders other than zamindars elected two representatives, for which purpose the districts of the Presidency were divided into a Northern and Southern group. It was found, however, that the number of voters in the Southern group was more than double that in the Northern group, and that nearly half of them (155) lived in one district (Tanjore), while of the remaining 169, 110 were inhabitants of the two districts on the West Coast. As there are no zamindars, properly so called, on the West Coast, which contains a large number of landholders and *malikandars* possessed of electoral qualifications, and as the language, tenures and interests of the West Coast proprietors are so distinct that no East Coast proprietor can reasonably claim to represent their interests, it has been decided to constitute the two West Coast districts of Malabar and South Canara into a separate electorate to which an additional seat has been allotted.

The same considerations apply to the mixed electorate recruited from Municipal Councils and District and Taluk Boards, which under the Regulations of 1909 comprised 8 groups of districts. In this electorate also a special West Coast constituency has been created consisting of the two districts named, while the groups generally have been rearranged on a linguistic basis, in the manner shown in the Schedule appertaining to this electorate.

Territorial changes, consisting of the alterations of district boundaries within the Presidency effected subsequent to the promulgation of the Regulations of 1909 have also been responsible for some minor modifications.

The United Provinces.—Since 1909 a new Division, with headquarters at Jhansi, has been formed in the United Provinces. Under the Regulations of that year certain specified District and Municipal Boards in 8 existing Divisions (exclusive of the hill Division of Kumaon) returned a member to the Provincial Council, and since the District and Municipal Boards of the newly created Jhansi Division are considered to be of sufficient importance to entitle them to separate representation, the number of members returned by this electorate has been increased from 8 to 9, thus raising the total number of elected members from 20 to 21. As the full Council previously consisted of 46 members only, or 4 less than the permissible maximum, it has not been necessary to make any reduction in the number (26) of nominated seats. The total number of seats on this Council is therefore now 47 instead of 46.

The creation of this new division has also necessitated a re-grouping of the electoral areas constituting the electorates for the return of four representatives of the Mohammedan Community. The reconstruction of the groups, as shown in Schedule V, is framed upon a basis of population.

The Punjab.—When the Regulations were framed in 1909 it was considered advisable to proceed on cautious lines in the matter of elective representation in this Province, owing to its comparative backwardness. Consequently the Punjab Council, excluding that of Burma, is the only one which has not hitherto contained a District Board electorate, and since it is considered that such an electorate can now be constituted with advantage, three seats have been assigned to it, a corresponding reduction being made in the number of nominated seats.

For similar reasons the enfranchisement of municipalities and cantonment committees was confined to those—11 in number—as to whose competency to exercise the privilege there was at the time no doubt, but it has now been decided to enlarge the electorate in the light of the experience since gained, and 21 municipalities have therefore been added to the existing number on the roll. The municipality and district board of Delhi, which now fall within a separate province, will not participate in consequence in the elections to the Punjab Council.

(c) *Changes in the constitution of the Governor-General's Legislative Council.*

The constitution of the Council under the Regulations of 1909 was as follows :—

Ex officio members (namely, His Excellency the President, the ordinary members of the Governor-General's Council, and the Lieutenant-Governor of the Province in which the Council is sitting) . . .	9
Official nominated members (of whom 8 represented the various provinces) [1]	28
Non-official nominated members (of whom 3 must represent, respectively, the landholders of the Punjab, the Mohammedans of the Punjab, and Indian commerce)	7
Elected members (non-officials)	25
Total . .	69

The Regulations further provided that at the second, fourth and succeeding alternate electing, 2 additional members should be elected, one by the Mohammedan landholders, of Eastern Bengal and Assam, and the other by the same class in the United Provinces. On these occasions the number of nominated members would have been 33 instead of 35.

The creation of three new provinces in place of two of those previously represented—Bengal and Eastern Bengal and Assam—and the constitution of a separate Legislative Council in each, has rendered it necessary to find room in the Imperial Council, which was already at the maximum strength allowed by statute, for one additional nominated official seat and for one elective

[1] Madras . . . . 1 Punjab 1
Bombay . . . . 1 Eastern Bengal and Assam 1
Bengal . . . . 1 Burma 1
United Provinces . . 1 Central Provinces . . 1

seat to be filled by selection by the non-official members of the additional Provincial Legislative Council now created. The first of these two seats will be found from the existing number of nominated official seats without increasing their total, but the addition of an elected seat on the second account necessitates a corresponding reduction in the number of non-official nominated seats. In view, however, of the importance of the Mohammedan community in Bengal as now constituted and of the privilege which the landholders of this community in the United Provinces enjoyed under the old Regulations of returning a second member at alternate elections, it has been decided to make a further reduction of one in the number of nominated non-official seats, and to add to the elective seats one to be filled at alternate elections, by the Mohammedans of Bengal and the Mohammedan landholders of the United Provinces respectively. The number of elected seats is now therefore 27, and that of nominated non-official seats 5, three of which remain assigned to particular interests.

With these exceptions the constitution of the Council remains unchanged save that the two seats previously filled by the landholder and Mohammedan electorates respectively in Eastern Bengal and Assam are now transferred to similar electorates in Bihar and Orissa. These interests in Assam were not considered to be of sufficient importance to merit separate representation on the Imperial Council, nor would it have been possible to grant this privilege without either disfranchising existing electorates or dispensing with an official majority.

As the result of these changes the constitution of the Governor-General's Council is now as follows :—

Ex officio Members		9
Official nominated members (of whom 9 represent the various provinces) [1]		28
Nominated non-official members		5
Elected Members :—		
(i.) By the Provincial Legislative Councils	12	
(ii.) By the landholders of Madras, Bombay, Bengal, United Provinces, Bihar and Orissa and Central Provinces	6	
(iii.) By the Mohammedans of Madras, Bombay, Bengal, United Provinces and Bihar and Orissa	5	
(iv.) By the Mohammedans of Bengal, and the Mohammedan landholders of the United Provinces at alternate elections	1	
(v.) By the Calcutta and Bombay Chambers of Commerce	2	
(vi.) By Municipalities and District Councils on the Central Provinces	1	— 27
Total		69

Madras	1	Burma	1
Bombay	1	Bihar and Orissa	1
Bengal	1	Central Provinces	1
United Provinces	1	Assam	1
Punjab	1		

II.—*Changes made in the qualifications of voters and candidates*

(*a*) *The following changes have been made applicable to all Councils* :—

(i.) Government officers have been expressly disqualified from standing for election. In certain of the schedules provision already existed to this effect, but it has been thought desirable to remove all possibility of doubt by a definite prohibition everywhere.

(ii.) It has been found necessary to insert some clear definition of the term 'firm' which occurs amongst the definition of qualified voters in the Mohammedan electorates. The definition adopted is 'an association of two or more individuals trading jointly, and not being registered under the Indian Companies Act, 1882, or any other law for the time being in force.'

(iii.) In certain electorates the payment of income-tax constitutes a qualification. In order to prevent the technical qualification of a person, who is not properly so qualified, by a colourable payment of an income-tax shortly before the election commences, the relevant schedules have been amended so as to provide that the payment of the prescribed amount must have been actually made during the financial year preceding that in which the election is to be held.

(iv.) In the schedules framed in 1909 there was no provision to ensure that a nominated candidate had been nominated with his consent. This defect has now been remedied, and it has further been provided that a nominated candidate shall be at liberty to withdraw from his candidature if he gives due notice to the proper authorities fourteen clear days before the recording of votes. A candidate who has thus once withdrawn will not, however, be at liberty to cancel his withdrawal and to stand again for the same election.

(v.) In the general disqualification clauses which appear in Regulations IV and VI of all Councils provision has been made for the declaration of lunatics by Magistrates, which the Lunacy Act of 1911 allows, by omitting the word 'Civil' which occurs in the phrase 'competent Civil Court.'

(*b*) In addition to the foregoing amendments, which are of universal application, *the following changes under this head have been made in the schedules relating to the individual Councils mentioned below* :—

Madras.

(i.) In the electorates consisting of the Municipal Councils and the District and Taluk Boards (Schedule III) the franchise and the right to stand for election were confined, under the Regulations of 1909, to persons

who at the time of election were actually members of those bodies. The schedule has now been amended so as to extend the franchise and the candidature qualification in this electorate to all persons who have been members of the bodies in question for an aggregate period of not less than three years during the decade preceding a date to be fixed by the local Government in preparation for the election. The change is in accordance with the system which was in vogue under the Regulations of 1909 in the electorates of the Municipalities and Districts Boards in Bombay and Bengal, of the major Municipalities of the United Provinces and of the Municipalities in the Punjab and Eastern Bengal and Assam, but it necessitates, as a corollary, provision for the periodical revision of the electoral roll, which has been effected by the amendment of rules 3 and 6 of the schedule in question. A similar procedure for the periodical revision of the roll has also been adopted, in the interests of uniformity, in the case of the electorates of (*a*) zamindars, landholders other than zamindars, and Mohammedans for the Madras Provincial Council, and (*b*) of landholders and Mohammedans for the Imperial Council.

(ii.) The franchise and the right to stand for election in this same mixed electorate has further been extended so as to include, as qualified voters and candidates, persons holding titles conferred by Government above the rank of 'Rao Sahib,' but who are not otherwise qualified to vote in this or other electorates. The amendment is justified on the ground that it is prima facie expedient to enhance the respect in which honorific titles are held, while there are many retired public servants who would make desirable accessions to the Provincial Legislative Council, but who do not possess the qualifications to vote and are therefore ineligible to stand as candidates for any of the larger constituencies.

(iii.) The income from land fixed as the property qualifications for electors in the electorate consisting of landholders other than zamindars has been reduced from Rs. 3,000 to Rs. 1,000 on the ground that the original limit was unduly high, and operated to restrict undesirably the number of electors.

(iv.) The definition of 'estate' which occurred in certain of the schedules framed in 1909 for elections to the Madras Provincial Council and for the election of representatives of that Presidency to the Governor-General's Council, was found in practice to be defective, and not in accord with the facts of land revenue

administration. The term has therefore been defined in such a way as to make it correspond with the provisions of the Madras Estates Land Act, 1908. For similar reasons the reference in the same schedules to 'tenants and kanomdars' under 'raiyotwari holders' as qualified voters has been omitted, because no public record is maintained of the income of such persons from land. The changes under this head have been incorporated in the Imperial schedule also.

(v.) Rule 7 (2) of Schedule VI as framed in 1909 has been eliminated, because it was inconsistent with rule 16 of the same schedule and with the corresponding rules in Schedule X relating to the Imperial Council.

(vi.) No limit has hitherto been fixed on the amount of pension which should be regarded as the minimum pensionary qualification of Mohammedan voters, and the absence of any limitation resulted in rendering eligible to vote persons drawing petty pensions and engaged in menial occupations. This anomaly has been removed by fixing a pension of Rs. 15 a month as the minimum amount which qualifies. A similar change has been made in the schedule relative to the election to the Imperial Council of a representative of the Mohammedan community in Madras.

(vii.) Under the schedules framed in 1909 joint landholders who are not zamindars enjoyed the privilege of nominating a representative to vote for them, while landholders who are zamindars did not. This anomaly has been removed by extending the concession to both classes.

Bombay.

(i.) The property qualification for Mohammedan electors residing in the city of Bombay, under rule 3 (*a*) of Schedule VII, as framed in 1909, was the possession of land assessed at, or of the assessable value of, Rs. 200. It was found that this provision resulted in the disqualification of certain large landholders, while small leaseholders were qualified, the reason being that the Government land assessment in Bombay city is generally a nominal quit rent and only certain areas are leased on rents fixed in proportion to their value. To obviate this difficulty the municipal assessment has been adopted as the criterion.

(ii.) Rule 3 (*b*) of this schedule has been necessitated by the ambiguity of the original rule 3 (*a*), which was silent on the subject of sharers of an estate, the share of each of whom was of the value laid down as the mimimum property qualification.

(iii.) The provision made by the rules framed in 1909 as

regards the practical connexion with the electoral area required of a candidate standing for election by District Board and Municipalities and Mohammedan electorates was found to be insufficient, and Schedules VI and VII have been so amended as to necessitate the possession by all candidates not merely of a place of residence in the Division, but also 'such practical connexion (with it) as qualifies him to represent it.'

Bengal, Bihar and Orissa and Assam.

By changes made in the qualifications of voters and candidates for election to these new Councils are meant departures from the qualifications laid down by the Regulations of 1909 for the Councils of Bengal or of Eastern Bengal and Assam, as the case may be. Save for the exceptions specified below, the qualifications laid down for these two Councils have been maintained intact for the Council of the provinces which now cover the corresponding areas. The only exceptions are mentioned below :—

Bengal.

(i.) In the landholders' electorate, the system of aggregating payments of land revenue or cesses in different divisions in order to qualify for a vote has been extended to the Eastern Bengal districts, in which it did not previously prevail.

(ii.) In the same electorate the property qualification which obtained under the old Bengal Regulations in the case of the Western Divisions of the new Presidency was the payment of land revenue amounting to Rs. 7,500 or cesses amounting to Rs. 1,875. In order to minimize the discrepancy between these rates and those obtaining in the Eastern Districts under the Eastern Bengal and Assam Council Regulations, the qualification has been reduced to Rs. 6,000 and Rs. 1,500 respectively.

(iii.) The franchise in the District Board electorate has been extended so as to embrace the non-official members of the local Boards in each District. It is anticipated that this measure, besides broadening the basis of representation, will encourage the growth of interest in these smaller bodies.

(iv.) In Eastern Bengal and Assam a candidate for election by a Municipal or District Board constituency was required to have, as a qualification, such practical connexion with the Division in question as qualified him to represent it. This condition had no place in the old Bengal Regulations, but has now been applied throughout the Bengal Presidency.

(v.) The scope of the Mohammedan franchise has been extended by including within it the following classes,

in addition to those qualified under the Regulations of 1909:—(*a*) Barristers, attorneys, vakils and pleaders; (*b*) medical men with certain qualifications, and (*c*) engineers with certain qualifications.

(vi.) The qualification in the landholders' electorate in favour of persons holding the title of Raja or Nawab or titles of higher rank has been withdrawn, with a reservation of the rights of those already so qualified. A similar change has been made in the corresponding electorate to the Imperial Council

Bihar and Orissa.

(i.) In addition to the class of persons enfranchised under the old Bengal Regulations in the Mohammedan electorate, the following classes have been added:—(*a*) Government servants drawing salaries of, or exceeding, Rs. 2,000 a year; (*b*) persons in receipt of pensions as retired gazetted or commissioned officers of Government.

(ii.) The qualification in the landholders' electorate in favour of persons holding the title of Raja or Nawab or titles of higher rank has been withdrawn, with a reservation of the rights of those already so qualified. A similar change has been made in the corresponding electorate to the Imperial Council.

Assam.

(i.) The restriction which was imposed by the Eastern Bengal and Assam Regulations, confining the franchise to Municipalities with a local income of Rs. 5,000 or more has been withdrawn, and every Municipality in the province now has at least one vote.

(ii.) Under the Eastern Bengal and Assam Regulations, the only Assam landholders who were qualified as such were landholders residing in the Surma Valley Division or in the district of Goalpara, who paid land revenue of not less than Rs. 500 or cesses amounting to not less than Rs. 125, or persons holding titles not lower in rank than Raja or Nawab. These qualifications have been retained, but the franchise has been extended to landholders residing in the other districts of the Assam Valley Division besides Goalpara.

(iii.) Under the Eastern Bengal and Assam Regulations, the property qualification in the Mohammedans' electorate of Assam was, in the Assam Valley Division, payment of land revenue or cesses of not less than Rs. 50, and in the Surma Valley Division, payment of land revenue of not less than Rs. 100 or cesses of not less than Rs. 50. Further, Mohammedan *joteders* in the district

of Goalpara who paid rent amounting to not less than Rs. 250 were also qualified. These qualifications have been maintained unaltered, except that the land revenue payment has been reduced in the Surma Valley Division to Rs. 50. It has further been provided, in modification of the rules in force in Eastern Bengal and Assam, that a Mohammedan *mutawali* is not a landholder in his own right for the purpose of the land qualification.

The Governor-General's Council.

Four changes have been made in the qualifications of voters and candidates for this Council, which follow consequentially on corresponding changes made in the qualifications for the Madras, Bengal and Bihar and Orissa provincial electorates. These have been specified above, but in addition the following departures from the qualifications laid down in the schedule relating to the election of representatives of the provinces of Eastern Bengal and Assam and Bengal, as previously constituted, have been effected, with the object of assimilating so far as possible the conditions which are to obtain in the Eastern and Western portions of the newly constituted Bengal Presidency.

The property qualification for the electorate consisting of landholders in Bengal has been reduced. Under the Regulations of 1909 it consisted in the possession of land on which either land revenue of not less than Rs. 20,000 or cesses of not less than Rs. 5,000 was paid. These amounts have been reduced to Rs. 10,000 and Rs. 2,500 respectively, and similar amounts have been fixed as the property qualification for the landholders' electorate for the Imperial Council in Bihar and Orissa.

Provision has been made, in accordance with the system in force in the corresponding electorate in the United Provinces, for the registration on the landholders' electoral roll of the names of managers of Hindu joint families, of firms and of companies which possess the necessary property qualification.

III.—*Changes made in electoral procedure*

(*a*) Three changes have been made relating to electoral procedure in the rules of all Councils. These are as follows :—

(i.) Returning Officers have been empowered to decide the validity under the rules of any nomination or vote, and their decision will be final, save as provided for by Regulations VIII and XVI.

The rules of 1909 in this respect were proved to be deficient, and practical anomalies occurred in consequence ; for instance,

it was held that under the rules, as they stood, the Returning Officer had no power to reject a vote tendered by a person not entitled to vote, so long as the would-be voter had complied with the instructions on the voting papers.

(ii.) A procedure has been prescribed, in accordance with the English practice, for assisting blind and illiterate voters to record their votes.

(iii.) Provision has been made that, in the case of plurality of voting or nomination papers, only the first paper received by the Attesting Officer, or the Returning Officer, as the case may be, shall be valid, and that if it is impossible to determine which was received first, then both or all shall be invalid. The absence of any provision in the rules of 1909 to meet this contingency gave rise to practical inconvenience.

(*b*) In addition to the above, the following changes have been made in the electoral procedure relating to the individual Councils named :—

Bombay.

(i.) Amendments have been made in the schedules relating to elections by Municipalities and District Boards with the object of enabling the Vice-Presidents, as well as the Presidents, of those bodies to perform certain electoral functions, namely (*a*) to perform the duties of Attesting Officer, and (*b*) to supply voting papers to delegates.

(ii.) Rule 5 (2) of Schedule V has been amended so as to enable the Returning Officer to send nomination papers to electors through the *mukhtiarkhar* of the *taluka*, instead of by registered post.

(iii.) Schedule VII Rule 7 (4), has been amended so as to provide that the Collector of Bombay shall attest nomination papers for the Mohammedan electorate of Bombay City, separate Attesting Officers being dispensed with.

(iv.) Rule 4 of this schedule has been amended so as to permit the electoral roll being posted at the office of the Collector of Bombay instead of at the Chief Presidency Magistrate's office.

(v.) An amendment of a similar nature has been made in rule 3 of Schedule V so as to permit of the electoral roll of the Sind Jagirdars being posted at the *taluka* head-quarters, as well as the district head-quarters.

These five amendments are based upon considerations of administrative convenience.

(vi.) In accordance with the wishes of the Bombay Government the voting papers of all electorates in that Presidency will henceforth be printed in counterfoil.

Bengal, Bihar and Orissa and Assam.

(i.) In accordance with the wishes of these Governments the procedure for electing candidates through the agency of delegates, which obtained in Bengal in the case of the local bodies' and the Mohammedans' electorates, and in Eastern Bengal and Assam in the case of the Mohammedans' electorate, has been abandoned, as practical experience proved it to be unsatisfactory. Selection will now be made by means of direct voting.

(ii.) Under the rules of 1909 Municipalities in Bengal and Eastern Bengal and Assam which had more than one vote were at liberty to distribute their votes as they pleased. They are now required to assign their votes to one candidate only, or to two candidates where two members are to be elected.

Governor-General's Council.

The only change made in the electoral procedure relating to the Imperial Council is a slight alteration of detail in the method to be followed by the non-official members of the Bengal and Bihar and Orissa Provincial Council in selecting their representatives for the Imperial Council. The change has been introduced at the instance of the two local Governments concerned, and is expected to work more conveniently than the old system.

IV.—*Other changes which cannot be classed under any of the three foregoing categories*

(i.) Regulation XIII in the case of all Councils has been amended since it was held to be doubtful whether in the shape in which it was enacted in 1909 it was *intra vires* of the Indian Councils Act, 1909, since Section 1 (2) of that Act, in pursuance of which this Regulation was framed, only authorizes regulations prescribing the number of additional members necessary to form a quorum. Moreover, the Regulation, in the form in which it was enacted in 1909, appears to have overridden Section 15 of the Indian Councils Act of 1861, since it took no account of the provision made therein for the senior Ordinary Member of Council presiding in the absence of the President, and of the Vice-President appointed under Section 4 of the Indian Councils Act, 1909.

(ii.) A clause has been inserted in Regulation I relating to all Provincial Councils, except those of Madras, Bombay, and Bengal, to make it clear that the sanction of the Governor-General is required to the nomination of expert no less than of ordinary members of the Council.

(iii.) Throughout the schedules (Imperial and Provincial) relating to the Madras Presidency, the words 'Fort St. George Gazette' (the official title of the Madras Government Gazette) have been substituted for the words 'Local official gazette' in order to avoid possible confusion with the district gazettes which are published in the Madras Presidency.

(iv.) The form of Regulation X, which specifies the term of office of an elected or nominated member, was found to preclude the election of a candidate to a seat on the Councils before the seat was actually vacant. It would have been inconvenient to postpone the completion of all elections until the outgoing member has actually completed his term of office, and to avoid this necessity the Regulation has been recast.

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